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No. (1)

Supreme Court, U.S.
FILED

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

CHARLES JONES-PETITIONER

VS.

DONALD J. TRUMP, ET AL-RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHARLES JONES

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QUESTIONS PRESENTED

1. DOES RULE 8 ACT AS A JUDICIAL BROOM TO ALLOW THE COURT OF APPEALS FOR THE SECOND CIRCUIT AND THE U.S. DISTRICT COURT TO DEPRIVE THE PETITIONER OF PROPERTY RIGHTS WITHOUT DUE PROCESS BY SWEEPING THE 5TH AMENDMENT UNDER THE JUDICIAL CARPET TO DISMISS TWO VALID CIVIL RIGHTS COMPLAINTS, WHICH ALSO CONTAINED NUMEROUS STATE LAW TORT CLAIMS, WITH PREJUDICE AND WITHOUT ADDRESSING EACH SPECIFIC, SEPARATE AND DISTINCT VALID CIVIL RIGHTS AND STATE LAW TORT CLAIM THEREIN?
2. WAS THE COURT OF APPEALS FOR THE SECOND CIRCUIT AND THE U.S. DISTRICT COURT CORRECT IN DEVIATING FROM AND THUSLY IN CONFLICT WITH THE PRIOR DECISIONS OF THE U.S. SUPREME COURT, OTHER CIRCUITS AND THE SECOND CIRCUIT'S OWN PRECEDENTS BY DISMISSING 17 CIVIL RIGHTS CLAIMS, 20 STATE LAW TORT CLAIMS AND A RICO CLAIM PURSUANT TO ALLEGED VIOLATIONS OF RULE 8 OF THE FEDERAL RULES OF CIVIL PROCEDURE WITH PREJUDICE AND WITHOUT GRANTING LEAVE TO AMEND?
3. WAS IT CORRECT FOR THE U.S.DISTRICT COURT ON A RULE 12(b)(6) MOTION TO INTERJECT ITS PERSONAL BIAS AGAINST PRO SE LITIGATANTS OR TO RESOLVE IMPORTANT ISSUES OF CREDIBILITY AND MATERIAL FACT IN FAVOR OF DEFENDANTS BY DEEMING THE COMPLAINT'S FACTUAL ALLEGATIONS TO BE "FANTASTIC" AND "DELUSIONAL" IN GRANTING RESPONDENTS' RULE 12 (b)(6) MOTIONS TO DISMISS?
4. WAS COLLATERAL ESTOPPEL OR RES JUDICATA APPLICABLE TO DISMISS CIVIL RIGHTS CLAIMS FOR CONSPIRACY AND UNLAWFUL SEARCH/SEIZURE BASED ON AN IRRELEVANT SUPPRESSION HEARING?

LIST OF PARTIES

DONALD J. TRUMP
ANN OGLETREE
MARLA MAPLES TRUMP
WILLIAM LYNCH
THE PLAZA HOTEL
BRIAN HIGGINS
ROBERT MORGENTHAU
JAY GOLDBERG
DOREEN KLEIN
CITY OF NEW YORK
THE TRUMP ORGANIZATION
JEANINE PIRRO
ALBERT PIRRO JR.
MATHEW CALAMARI
DOMENIC PEZZO
JANIE ELDER
JOHN BANER
ROBERT GIANETTA
DEL LARROCA
FREDERICK H. COHN
EXECUTIVE PLAZA CONDOMINIUM
CDL HOTELS
MICHAEL BERGER
RICHARD FIELDS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Second Circuit, dated September 21st, 1998, appears at **Appendix A** to the petition and is not published.
2. The opinion of the United States District Court, Southern District of New York, dated May 22nd, 1997, appears at **Appendix B** to the petition and has been designated for publication but not yet reported.
3. The opinion of the United States District Court, Southern District of New York, dated July 11th; 1997, appears at **Appendix C** to the petition and is reported at 971 F.Supp. 783.
4. The opinion of the United States District Court, District of Connecticut, dated March 26, 1996, appears at **Appendix D** to the petition and is reported at 919 F. Supp. 583

JURISDICTION

1. The date on which the United States Court of Appeals for the Second Circuit decided my case was September 21st, 1998.
2. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 12th, 1999, and a copy of the order denying rehearing appears at **Appendix E**.

3. The jurisdiction of the court of first instance was diversity of citizenship, pendent jurisdiction pursuant to 28 U.S.C.1367 and federal question jurisdiction pursuant to 42 U.S.C.1983.
4. The jurisdiction of this Court is invoked under 28 U.S.C.1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION.
2. FIRST AMENDMENT TO THE U.S. CONSTITUTION GUARANTEEING THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION.
3. CIVIL RIGHTS ACT, TITLE 42, U.S.C., SECTION 1983.
4. RACKETEERING INFLUENCED CORRUPT ORGANIZATIONS ACT, TITLE 18, U.S.C., SECTIONS 1961 (1)(A), 1962 (b), (c) and (d).
5. TRAVEL ACT, TITLE 18, U.S.C., SECTION 1952
6. HOBBS ACT, TITLE 18, U.S.C., SEC. 1951.
7. RULE 8, FEDERAL RULES OF CIVIL PROCEDURE.
8. RULE 12 (b)(6), FEDERAL RULES OF CIVIL PROCEDURE.

STATEMENT OF THE CASE

I. *Background Of Lower Court Proceedings And Appellate Review*

This case concerns two separate and distinct civil rights complaints, containing numerous state tort claims and a request for injunctive relief, that arose from different operating facts and an array of different defendants, to wit:

a) The first civil rights complaint was filed June 26th, 1995, in the District of Connecticut. Defendants' various motions to dismiss were denied and Chief Judge Peter C. Dorsey subsequently transferred the case to the Southern District of New York. The civil rights claims involved four searches, one of petitioner's home in Connecticut, and three of petitioner's New York office, and numerous state law torts, including a request for injunctive relief.

The searches occurred in July of 1992, including the specific search of July 29th, 1992, of the petitioner's New York office for purported property belonging to respondents Donald J. Trump, the Trump Organization and Plaza Hotel without any probable cause or justification therefore, which caused damage to petitioner's property in the proximate sum of $23,540.00 and was not addressed by either the Court of Appeals or District Court opinions. None of these four searches were ever the subject of a suppression hearing. The claims stem from petitioner's false arrest and the warrantless search of his New York office on July15th, 1992. A suppression hearing was conducted only for that sole single search. Petitioner's state conviction was affirmed on a state appeal, but was subsequently vacated as a result of a federal habeas proceeding, after a federal judge found the state trial judge's testimony to be not credible.

b) The second civil rights complaint, which also included numerous state law torts, evolved three years later from completely different operating facts and was filed September 12th, 1996, in the Southern District of New York. The action arose on October 5th, 1995, after the petitioner was caused to be falsely arrested and unlawfully imprisoned by a misuse of court process in a retaliatory and malicious prosecution to chill petitioner's 1st Amendment rights to freedom of speech/expression/travel by means of state orders-of-protection, claims that were never reviewed by either the Court of Appeals or District Court. The false charges were eventually dismissed in toto nearly two years later on February 7th, 1997, for the sole reason of the complainants-respondents' conduct in refusing to appear, testify and prove the allegations.

II: *The Civil Rights And State Law Tort Claims*

Between the two complaints there were 17 totally separate civil rights claims and 20 state law claims based on the different operating facts, including a RICO involving a conspiracy to violate the RICO, Hobbs and Travel Acts, 18 U.S.C.1962 (b)(c)(d), 18 U.S.C. 1951 and 18 U.S.C. 1952, respectively, by, amongst and between numerous defendants-respondents and request for injunctive relief, to wit:

a) The first civil rights complaint, filed June 26th, 1995, in the District of Connecticut and subsequently transferred to the Southern District of New York, consisted of specific civil rights and state law tort claims for retaliatory prosecution, unlawful search and seizure, verbal abuse and harassment, refusal of medical care, conspiracy to violate Sec. 1983, denial of a fair trial, theft/conversion, excessive use of force and violations of Title 18, United States Code, Section 1962(b)(c)(d)/aka/ RICO, a Sec. 1983 claim for "custom and practice" against the City of New York, and a request for injunctive relief.

b) The second civil rights complaint, filed September 12th, 1996, in the Southern District of New York, consisted of specific civil rights and state law tort claims for false arrest, unlawful imprisonment, unlawful search and seizure, malicious prosecution, retaliatory prosecution, excessive use of force, denial of First Amendment rights to travel, free speech and expression in violation of Sec. 1983, conspiracy to violate Sec. 1983, breach of contract, and a Sec. 1983 claim against the City of N.Y. for "custom and practice."

c) The District Court improperly applied collateral estoppel and res judicata to many civil rights claims involving search and seizure and the RICO conspiracy claim on the "sole" basis of a suppression hearing that concerned a single search that occurred on July 15th, 1992. The suppression hearing did not litigate any factual issues involved in the four subsequent searches set forth in the complaint or the operating facts that constituted the RICO claims that occurred later over a four year period, which still continue to this date.

d) Inexplicably, the Court of Appeals affirmed dismissal solely pursuant to Rule 8 and erroneously concluded that amendment would be futile because amendment could not cure the legal defects of the two complaints. Prior Court of Appeals precedents hold that amendment should be freely granted at pleading stage.

III. *The Court of Appeals For The Second Circuit & District Court Deprived Petitioner Of Property Under Color of Federal Law Without Due Process In Violation Of The Due Process Clause Of The Fifth Amendment; Each Cause Of Action Established A Property Interest In Each Civil Right & State Law Tort Claim*

For the purpose of deciding the respondent's various Rule 12 (b)(6) motions to dismiss, the U.S. District Court inexplicably consolidated the two separate and distinct complaints, deliberately skipping the aforementioned specific civil rights and state law tort claims, while impermissibly deciding others selectively in purported "appropriate groups," which resulted in a wholly improper mixing of diverse questions of law and fact and manifest injustice to the petitioner. District court improperly acted as judge and jury, to wit:

a) The District Court in deciding some claims, often applied the court's vague, ambiguous legal interpretations solely to claims against state actors, while entirely omitting any reference to the same civil rights and state law tort claims asserted against private actors, which got lost in the shuffle of "highly-irregular" and "inappropriate" district court-orchestrated shortcuts.

b) The District Court dismissed false arrest/unlawful imprisonment claims against state actors-respondents in the petitioner's complaint stemming from the dismissed criminal proceeding that commenced on October 5th, 1995, but did not address those specific valid state law tort claims as alleged against private actors-respondents responsible for initiating and continuing the retaliatory, malicious criminal prosecution. Neither of the latter two civil rights and state law tort claims were ever addressed by the District Court or Court of Appeals. Significantly, the criminal proceeding was subsequently dismissed in toto due to the conduct of the complainants in abandoning the prosecution.

c) As a result, the District Court subsequently rendered a very confusing, factually inaccurate and legally deficient opinion on May 22nd, 1997, that was necessarily revised after the district court granted petitioner's motion to amend/and/or vacate judgment, when the district court rendered a "second" opinion dated July 11th, 1997, that still manifestly failed to correct the due process and factual failures of the first opinion as to specific civil rights and state law claims, to wit:

i) The U.S.District Court made the following pronouncements in its two successive opinions and orders, dated May 22nd, 1997, and July 11th, 1997,i.e.: "These consolidated actions consist of 125 pages of pleadings setting forth a combined total of 54 independent claims against 25 defendants"; "This case brings into stark contrast the

tension between the long-standing statutory right of access to the United States courts by pro se litigants"; "The Court of Appeals issued a reminder that the law does not permit premature dismissal of arguably meritorious claims brought pro se"; "Were I to address each of plaintiff's claims individually---and each defendant's corresponding arguments---this Opinion would be the length of a Tom Clancy novel"; "I will address plaintiff's claims and defendants' motions in appropriate groups"; "Plaintiff's complaints are, for the most part, based on claims arising from the events surrounding the searches of his office and home, his arrest, prosecution and subsequent convict"; "All of plaintiff's state law claims arose from events that took place in July of 1992"; "Plaintiff's earliest claims for false arrest and wrongful imprisonment were filed in 1995. They are therefore barred by the applicable statute of limitations";"Plaintiff's claims were not barred by the one-year statute of limitations"; Typically, in deciding a motion to dismiss a district court will outline the required elements for each cause of action set forth in the complaint and discuss whether the factual allegations in the pleadings can survive a 12(b)(6) motion to dismiss. Unfortunately, the number of claims set forth in these two complaints prevents such an approach"; "This Opinion therefore addresses the specific deficiencies in plaintiff's claims only where necessary"; "As a result, the criminal case has not been 'terminated' in plaintiff's favor. Because plaintiff has not--and cannot--allege facts sufficient to constitute prima facie claim for malicious prosecution, all such claims must be dismissed"; "Furthermore, all claims based on the allegedly malicious prosecution---specifically, plaintiff's extortion claims--must also be dismissed"; "More importantly, however, I find that given the fantastic and delusional nature of plaintiff's claims"; "Plaintiff may have a viable claim for malicious prosecution after the final resolution of his criminal prosecution"; "I did not individually address each of plaintiff's myriad Sec.1983 claims." (emphasis added). These statements demonstrate the confusing, ambiguous nature of the district court's opinion and extreme prejudicial bias.

ii) ***Significantly***, the District Court's "own opinion" confirms an *intent to deprive petitioner of due process* by admitting in fact that it did "*not individually address each of plaintiff's myriad Sec. 1983 claims*" because it was "not necessary," seemingly justifying the

court's misguided omissions with the excuse that the opinion would be the "length of a Tom Clancy novel." Apparently, the district court was so over-whelmed by impermissibly choosing to treat the two complaints as a single action, and blinded by personal bias against pro se litigants, that the court-orchestrated shortcuts caused a denial of due process. The district court then improperly and unconstitutionally used Rule 8 as a judicial broom to sweep the Fifth Amendment under the judicial carpet to cover-up its constitutional errors, which the Court of Appeals affirmed.

iii) The conduct of the respondents as set forth in the two separate and distinct complaints, which evolved out of different operating facts, created numerous causes of action for state law torts and violations of petitioner's civil rights. As a matter of law, each cause of action established a property interest in and property right to each separate and distinct civil rights and state law tort claim against both state and private actors, including civil rights claims for "conspiracy to violate Sec. 1983," "custom and practice," "denial of a fair trial," "verbal abuse," "excessive use of force," "retaliatory prosecution," "malicious prosecution," "false arrest," "unlawful imprisonment" and "free speech/expression/travel" pursuant to Sec.1983 and state law tort claims for "breach of contract," "false arrest," "unlawful imprisonment," "retaliatory prosecution" and "malicious prosecution," and a request for "injunctive relief."

iv) Inexplicably, neither the district court in its two opinions, or the Court of Appeals in affirmation thereof, specifically addressed any of the aforementioned claims against all defendants, and in fact deliberately skipped many claims entirely, including those set forth in (iii) above, depriving the petitioner of a clearly-established constitutional right to procedural due process as guaranteed by the 5th Amendment. Significantly,the issue of due process was discussed by the U.S. Supreme Court in Caldwell v. State of Texas, 11 S. Ct. 224, 137 U.S. 692: "*Law, in its regular course of administration through courts of justice, is due process. Due process is secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government.*" The District Court, by shirking the duty of its office in refusing to fulfill its mandate and acting unconstitutionally, virtually dumped the two complaints in the lap of the Court of Appeals.

v)The petitioner articulated and presented the 5th Amendment argument to the Court of Appeals for the Second Circuit upon appeal from the district court, which failed to even consider this constitutional argument and affirmed constitutional error by upholding reckless, wholesale dismissal of valid civil rights and state law tort claims with prejudice so as to deprive respondent of property rights without due process in violation of the 5th Amendment.

vi) The Court of Appeals was unnecessarily saddled by the District Court with a complete "de novo" review of the district court's arbitrary dismissal of all the aforementioned claims, which was mandated as a matter of law, but instead affirmed dismissal without even the pretense of "de novo" review, constituting a further erosion and deprivation of due process that deprived petitioner of property rights without due process in violation of petitioner's clearly established right to due process as secured by the 5th Amendment. Walker v. Sauvinet, 92 U.S. 90; Fay v. Noia, 83 S.Ct. 822, 372 U.S. 391 [Due process of law comprehends the right to be heard and explicit procedural rights.]

IV: *The Court of Appeals and District Court Deviated From Relevant Decisions Of The U.S. Supreme Court, Other Circuits And The Prior Decisions Of The Second Circuit By Granting & Affirming Dismissal With Prejudice Pursuant To Rule 8 Without Leave To Amend In Abrogation Of The The Fifth Amendment Right To Due Process*

The Court of Appeals for the Second Circuit erroneously concluded that it was not an abuse of discretion for the district court to deny leave to amend for the purported reason that no amendment could cure the purported legal defects of the two complaints. It is clearly apparent that both the District Court and 2nd Circuit invoked discretionary powers under Rule 8 solely to intentionally obfuscate, circumvent and abrogate petitioner's clearly-established right to due process as secured by the 5th Amendment by using Rule 8 as a judicial broom to sweep two valid civil rights complaints and the Fifth Amendment under the judicial carpet. The assertion was also factually and logically incorrect as a matter of law for the reason that

specific civil rights and state law tort claims knowingly overlooked by the district court fell between the cracks, were never reviewed, required no amendment and should not have been dismissed.

a)The Court of Appeals considered none of petitioner's substantial due process arguments and rendered a scant "summary order" affirming dismissal of the two complaints with prejudice based solely on purported violations of Rule 8 pleading, which was the sole and only reason particularized by the Second Circuit panel.

b)The Court of Appeals for the Second Circuit should have been guided by its own decisions in Traguth v Zuck, 710 F.2d 90, 95 (2nd Cir. 1983), which held that "implicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of lack of legal training"; Escalera v. NYC Housing Authority, (2ndCir. 1970), 425 F.2d 853 [Action should not be dismissed at pleadings stage unless it appears to a certainty that plaintiffs are entitled to no relief]; and Salahuddi v. Cumo (2nd Cir. 1988), 861 F.2d 40 [It generally will be an abuse of discretion to deny leave to amend complaint when dismissing non-frivolous original complaint on sole ground that it does not constitute a short and plain statement required by Rule 8]. Other sister circuits and Supreme Court decisions conflict with dismissal of the instant actions in pleading stage without granting leave to amend. See, Bertucelli v. Carreras, 467 F.2d 214, 215 (9th Cir.1972); Gordon v. Green, 602 F.2d 743, 7;45-47 (5th Cir. 1979). See, also Conley v. Gibson (1957), 355 U.S.41, 45-46, 78 S.Ct. 99, 102; Bayron v. Trudeau, 702 F.2d 43, 45 (2nd Cir.1983); Fries v. Barnes, 618 F.2d 988, 989 (2nd Cir.1980)

c) Moreover, the Court of Appeals ignored the circuit's own admonitions in Koehl v. Dalsheim, 85 F.3d 86, 89 (2nd Cir. 1996) [The law does not permit premature dismissal of arguably meritorious claims brought pro se] and Cruz v. Sielaff (S.D.N.Y. 1991), 767 F. Supp. 547 [Pro se complaint is to be liberally read when it implicates vindication of civil rights or civil liberties.

d)Furthermore, the rule in the Second Circuit is that district courts should "heed the admonition of Rule 15 and allow amendment 'freely' if it appears at all possible that the plaintiff can correct the defect." Oliver Schools v. Foley, 930 F.2d 248, 253 (2nd Circuit

1991). Despite arguments raised in petitioner's brief that specific civil rights and state law tort claims were dismissed by the district court without even a pretense of review and therefore no amendment was required, while others if amended could cure legal defects, the 2nd Circuit inexplicably ignored these arguments, affirming the dismissal with prejudice, which in effect barred the petitioner from any adjudication of valid civil rights and state law tort claims whatsoever, denying the petitioner a statutory right of access to a U.S. court, constituting a deprivation of property rights to said claims without due process as guaranteed and secured by the 5th Amendment.

e)Significantly, neither complaint was so vague, ambiguous, confused or otherwise unintelligible that its true substance was well disguised, which was the standard set by the 9th Circuit for dismissal pursuant to Rule 8 in Gillibeau v. City of Richmond, 417 F.2d 426, 431 (9th Cir. 1969). In fact, the respondents had no difficulty addressing the respective claims of the two complaints as they pertained to the conduct, acts and actions of each named defendant.

f)The Court of Appeals and district court also opined that the two complaints were unnecessarily lengthy. The Court of Appeals and district Court both treated the two complaints as a single action by virtue of the district court's improper consolidation thereof and applied Rule 8 on the basis of length, which conflicts with decisions in Citicorp Inter. Trading Co. v. Western Oil & Refining, S.D.N.Y. 1991, 771 F. Supp. 600, and Grove Holding Corp. v. First Wis.Nat.Bank of Sheboygan, E.D. Wis. (1992), 803 F.Supp.1488, both holding that "mere length of a complaint is not a sufficient basis to justify dismissal pursuant to Rule 8."

g)The Court of Appeals and district court also opined that the two complaints contained scandalous, immaterial and impertinent matter, but that was not a legitimate basis to deprive petitioner of due process by dismissal pursuant to Rule 8. The district court's decision conflicts with other decisions of sister district courts, including Giuliano v. Everything Yogurt (E.D.N.Y. 1993), 819 F. Supp. 240, which held that "Where deficiency of pleading is that it contains too much detail, court should generally strike redundant or immaterial matter, rather than dismiss complaint."

h)Finally, the Court of Appeals for the Second Circuit and the district court ignored the admonition of the U.S. Supreme Court in Hughes v. Rowe, 449 U.S. 5, 10 (1980) per curian, (citing Haines v.Kerner, 404 U.S. 519, 520 (1972)), that a pro se party's pleadings must be "liberally construed" and are held to "less stringent standards than formal pleadings drafted by lawyers."

V: *The District Court Improperly Decided Issues Of Credibility And Fact To Determine Rule 12(b)(6) Motions To Dismiss, Which Conflicts With Important U. S. Supreme Court Precedents*

The district court improperly interjected its personal bias against pro se litigants by deciding important issues of credibility and also improperly determined facts, which was impermissible and well-settled as a matter of law, where the factual allegations of the complaint must be considered true for the purpose of deciding a Rule 12(b)(6) motion, to wit:

a)Significantly, the district court demonstrated a specific bias towards all pro se litigants in general with a lengthy, wholly improper dissertation about pro se litigants clogging the courts, and this pro se litigant in particular by characterizing the factual allegations of the two complaints as "fantastic," "delusional" and "harassment" to the extreme prejudice of petitioner. Due process also mandates an unbiased and impartial administrative tribunal. Taylor v. NYC Transit Authority (S.D.N.Y. 1970) 309 F. Supp. 785, affirmed 433 F.2d 665; Barszcz v. Bd. Of Trustees, 400 F. Supp. 675.

b)Significantly, these extremely partial and bias comments to the extreme prejudice of this petitioner contained in the opinions of the U.S. district judge are contrary to and conflict with the holdings of the U.S. Supreme Court in Hughes v. Rowe, 449 U.S. 5, 10 (1980), Haines v. Kerner, 404 U.S.519, 520 (1972) and **especially** Neitzke v. Williams, 490 U.S.319, 327 (1988), the latter emphatically holding that "Rule 12(b)(6) does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations.(emphasis added)".

REASONS FOR GRANTING THE PETITION

For the reasons stated in the Statement of the Case herein above, the respondent's petition for a writ should be granted, including for the following amplified and additional compelling reasons:

1. When one party injures another party, a cause of action is created for the injured party. The injured party as a matter of law has a clearly established property right to and property interest in each and every legitimate claim arising out of said injury set forth in a timely filed complaint to seek redress thereof and may not be deprived of that property right and interest without due process as guaranteed by the 5th Amendment to the U.S. Constitution, to wit:

a)The District Court and Court of Appeals in fact and indeed deprived the petitioner of property rights to numerous civil rights and state law tort claims set forth in two separate/distinct complaints, to wit--civil rights claims for malicious prosecution, false arrest, unlawful imprisonment, retaliatory prosecution, denial of fair trial, excessive use of force, unlawful search and seizure and refusal of medical care, verbal abuse/harassment, chilling of 1st Amendment rights to travel/free speech/ expression and state law tort claims for false arrest, unlawful imprisonment, malicious prosecution, retaliatory prosecution, breach of contract, theft and destruction of private property and injunctive relief-- by dismissing the two complaints containing these claims without pretense of review, without due process and unconscionably with prejudice, which barred petitioner from re-bringing the claims in any other court, then unconstitutionally used Rule 8 as a judicial broom to sweep the aforementioned claims under the judicial carpet to cover-up constitutional error.

b)The Court of Appeals denied the petitioner a clearly established right to due process as guaranteed by the 5th Amendment and has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court as to call for an exercise of this Court's supervisory power.

2. Although the District Court reviewed some civil rights and state law tort claims pertaining to state actors, the court selectively skipped over the aforementioned specific claims as asserted against private actors acting under color of law with state actors, to wit:

a) The District Court decided civil rights claims on technical issues, including state notice of claim requirements, against state actors, who acted under color of law with private actors, but ignored the same claims set forth against the private actors, who are not entitled to state notice of claim requirements,including claims for false arrest, malicious prosecution, unlawful imprisonment and retaliatory prosecution. The District Court also omitted review of a 1st Amendment claim pursuant to Sec. 1983, based on restrictions placed on petitioner's right to travel/free speech/expression. Inexplicably, the Court of Appeals affirmed these constitutional errors of the District Court.

b) As another significant example, this petitioner had a valid civil rights and state law tort claim for malicious prosecution against state and private actors associated with a wrongful arrest and subsequent prosecution that commenced on October 5th, 1995, that terminated in petitioner's favor when the charges were dismissed in toto for reason of the conduct of the two complainants in refusing to appear, testify and prove the charges, which constituted an abandonment of the prosecution. For reason of an improper consolidation of two separate and distinct complaints, the district court confused this claim with the operating facts involved in the other complaint, yet when the petitioner brought this important fact to the attention of the district court, and also to the Court of Appeals upon appeal of the District Court's two opinions and orders, nonetheless the claim was still dismissed without due process and with prejudice, which denied the petitioner the right to a full and fair opportunity to adjudicate or re-bring the claim in any other court.

c) Furthermore, the District Court also failed to address the specific civil rights and state law tort claims for retaliatory prosecution, false arrest and unlawful imprisonment claims against private actors, acting under color of law with state actors, as well as the civil rights claim for excessive use of force, verbal abuse, abuse of process, refusal of medical care and retaliatory prosecution against state actors, not to mention a request for injunctive relief.

d) The conduct of the district court and Court of Appeals cannot be tolerated or allowed to stand for the simple reason it is a horrific affrontation to the rights and privileges secured by all citizens under the 5th Amendment, including the right to due process. Rule 8

cannot be used as a tool for injustice or as a judicial broom to sweep the 5th Amendment under the judicial carpet.

e) The petitioner suffered significant physical injury and significant monetary loss from property damage in the proximate sum of $23,540.00 and has been deprived of significant property rights to numerous civil rights and state law tort claims without due process, including civil rights claims for excessive use of force and verbal abuse, the latter claims also among those never reviewed.

3. As a result, the petitioner is now without any legal remedy to recover said damages or to adjudicate said claims because of the arbitrary decision of the District Court to dismiss these civil rights claims without pretense of due process and with prejudice, which the Court of Appeals affirmed in a scant summary order on the basis of Rule 8 in violation of the 5th Amendment..

a) The petitioner has in effect been denied access to a U.S. courthouse to redress legitimate and significant claims through the arbitrary exercise of power and unconstitutional acts by judges of the U.S. district courts, which in this specific instance is the Southern District of N. Y. and Court of Appeals for the 2nd Circuit.

b) The District Court judge apparently felt so overwhelmed by the work necessarily entailed in deciding 17 civil rights claims, 20 state law tort claims and a RICO claim that the District Court resorted to improper shortcuts to decide the various Rule 12(b)(6) motions to dismiss, to wit: the District Court improperly grouped divergent civil rights claims and stretched the application of the doctrine of collateral estoppel to an isolated suppression hearing that involved one search on a single day in 1992, to provide the purported basis to dismiss the RICO claim and numerous civil rights claims that were based on conspiracy theories that evolved over a period of three years subsequent to that suppression hearing. This was wholly unreasonable and prejudicial to the petitioner.

4. The decisional aberrations of the District Court and Court of Appeals, which are in conflict with and cannot co-exist with precedents of the U.S. Supreme Court and other sister circuits/ district courts as set forth herein, must not be allowed to stand as they affect numerous other litigants subject to the prejudicial, personal whims of overzealous district court judges declining to fulfill the mandate of the U.S. District Court, which is to protect and

enforce the civil rights of U.S. citizens as guaranteed by the U.S. Constitution. Political posturizing because of whom the defendants are is not an appropriate basis to dismiss valid civil rights complaints. Novelist Tom Clancy is irrelevant. This type of unconstitutional behavior should be rejected by the U.S. Supreme Court by granting this petition.

5. Significantly and as a final compelling reason to grant this petition, the District Court judge simply lost all objectivity, perspective, fairness and impartiality in its deliberations by improperly and unjustly characterizing petitioner's factual allegations and claims as "delusional," "fantastic" and designed solely to "harass" the defendants and used Rule 8 improperly as a tool of injustice to dismiss the civil rights complaints to the extreme prejudice of petitioner, to wit:

a) The District Court judge simply ignored important facts that the claims were based on a false arrest that took place, that property was damaged during an unlawful search and that it was the petitioner who suffered special damages as a result of the wrongful conduct of the state and private actors/defendants, none of which were "fantastic," "delusional" or solely meant to "harass" the respondents as unfairly asserted by the District Court.

5. The petitioner has no other adequate legal remedy at law to obtain a fair adjudication of valid civil rights claims without being exposed to the prejudices and personal bias of federal jurists, sitting in courts of competent jurisdiction therein, solely on the basis of a litigant's pro se status and a judge's disbelief of the factual allegations of a complaint. Both the District Court and Court of Appeals dismissed the complaints, including significant, valid civil rights and state law tort claims never addressed, with prejudice to abrogate petitioner's rights under the Fifth Amendment and deny petitioner an adequate remedy at law to adjudicate said claims, which is unconscionable misconduct that requires this Court's intervention.

CONCLUSION

For the foregoing reasons stated herein, the Petition for a Writ of Certiorari should be granted and a summary order entered in the above captioned petition remanding this action to the Court of

Appeals for the Second Circuit for further proceedings to resolve the questions presented in this petition as decided by order of the Supreme Court of the United States.

RESPECTFULLY SUBMITTED,

CHARLES JONES,Petitioner-Pro Se
150 West 51st Street, Suite 802
New York, New York 10019 **DATED:FEBRUARY 27TH, 1999**
(212) 969-9500

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SDNY/NY
96-cv-6927
SCHEINDLIN

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR THE PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21 day of September one thousand nine hundred and ninety-eight.

PRESENT: HONORABLE JON 0. NEWMAN, HONORABLE RICHARD J. CARDAMONE, HONORABLE FRED I. PARKER,

Circuit Judges.

CHARLES JONES,

Plaintiff-Appellant,

V.

DONALD J. TRUMP, MARLA MAPLES TRUMP, THE PLAZA HOTEL, also known as Plaza Operating Partners, LTD., ROBERT MORGENTHAU, individually and as District Attorney, County of New York, DOREEN KLEIN, individually & as Assistant District Attorney for the County of New York, THE TRUMP ORGANIZATION, JEANINE PIRRO, District Attorney, individually and as District Attorney, County of Westchester, ALBERT PIRRO, MATTHEW CALAMARI, DOMENIC PEZZO, JANIE ELDER, JOHN BANER,Individually & as a New York City

Police Officer, ROBERT GIANETTA, Individually & as a New York City Police officer, DEL LARROCA, FREDERICK H. COHN, EXECUTIVE PLAZA CONDOMINIUM, CDL HOTELS, MICHAEL BERGER, RICHARD FIELDS, CITY OF NEW YORK, ANN OGLETREE, BRIAN HIGGINS, Individually & as a New York City Police Officer, WILLIAM LYNCH, individually as a New York City Police Officer,

Defendants-Appellees.

APPEARING FOR PLAINTIFF APPELLANT: Charles Jones,Greenwich, CT;APPEARING FOR DEFENDANTS-APPELLEE, City of New York: Jane S. Earle,Corporation Counsel's Office, New York, NY;APPEARING FOR DEFENDANT-APPELLEE, Donald J. Trump: Magda L. Cruz,Belkin, Burden, Wenig&Goldman,New York, NY;APPEARING FOR DEFENDANT -APPELLEE, Jeanine Pirro:Thomas G. Gardiner,County Attorney's Office White-Plains, NY;APPEARING FOR DEFENDANT-APPELLEE, Albert Pirro:Scott Salant,Pirro, Collier, Cohen & Halpern,White Plains, NY;APPEARING FOR DEFENDANT-APPELLEE, Executive PlazaCondominium:Frederick Cohn; APPEARING FOR DEFENDANT-APPELLEE, Robert Morgenthau: Alan Gadlin,New York, NY

Appeal from the United States District Court for the Southern District of New York (Shira A. Scheindlin, Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the district court be and it hereby is AFFIRMED.

Charles Jones, pro se appellant, appeals from the Opinions and Orders of the United States District Court for the Southern District of New York (Shira A. Scheindlin, Judge) dismissing Jones's amended complaints pursuant to Rule 12(b)(6) and Rule of 8 of the Federal Rules of Civil Procedure.

For substantially the same reasons expressed in the district court's Opinions and Orders dated May 22, 1997 and July 11, 1997, we affirm the district court's dismissal of Jones's claims. In particular, we

find that the district court was correct in holding that Jones's two amended complaints manifestly violated Rule 8 in light of their "needless length and complexity" and inclusion of allegations that are "scandalous, impertinent, immaterial and provocative." See Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988). The district court did not abuse its discretion in refusing to grant Jones leave to amend in light of the resultant prejudice to the defendants and Jones's inability to cure the many legal defects in the complaints. See Oliver Schools, Inc. v. Foley, 930 F.2d 248, 253 (2d Cir. 1991).

For the reasons set forth above, the judgment of the district court is hereby AFFIRMED.

FOR THE COURT:

S/_____

Carolyn Clark Campbell, Clerk

by: Lucille Carr, Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

OPINION AND ORDER

CHARLES JONES,

Plaintiff,

96Civ2995 (SAS)

- against -

DONALD J. TRUMP, MARLA MAPLES TRUMP, RICHARD FIELDS, ANN OGLETREE, DOMENIC PEZZO, MATTHEW CALAMARI, THE TRUMP ORGANIZATION,MICHAEL BERGER, JAY GOLDBERG, CITY OF NEW YORK, DOREEN KLEIN, individually and as an Assistant District Attorney for the County of New York, ROBERT GIANETTA, BRIAN HIGGINS, JOHN BANER and WILLIAM LYNCH, individually and as police officers of the City of New York, JEANINE PIRRO, individually and as District Attorney, County of Westchester, ALBERT PIRRO, Jr., ROBERT M.MORGENTHAU, individually and as District Attorney of New York, CDL Hotels,

Defendants.

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CHARLES JONES,

96Civ6927(SAS)

Plaintiff,

- against -

MARLA MAPLES TRUMP, DONALD J. TRUMP, THE PLAZA HOTEL, ROBERT M. MORGENTHAU, DOREEN KLEIN, THE TRUMP ORGANIZATION, JEANINE PIRRO, ALBERT PIRRO, Jr., MATTHEW CALAMARI, JOHN BANER, DOMENIC PEZZO, ROBERT GIANETTA,DELLA ROCCA, THE CITY OF NEW YORK, JANE ELDER, FREDERICK COHN,EXECUTIVE PLAZA CONDOMINIUM, CDL HOTELS, MICHAEL BERGER, RICHARD FIELDS,

Defendants.

----------X

APPENDIX B

SHIRA A. SCHEINDLIN, District Judge:

These consolidated actions consist of 125 pages of pleadings setting forth a combined total of 54 independent claims against 25 defendants. Plaintiff's multiple claims are predicated on 21 different legal theories: violations of 42 U.S.C. § 1983, violations of the RICO statute (18 U.S.C. § 1962), malicious abuse of process, retaliatory prosecution, fraud, extortion, conspiracy, defamation, breach of contract, intentional infliction of emotional distress, trespass, conversion, theft, invasion of privacy, harassment, false arrest, wrongful imprisonment, violation of the New York Constitution, breach of fiduciary duty, assault and battery. All defendants now move to dismiss plaintiff's claims pursuant to Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure. The City of New York and five members of the New York City Police Department (defendants Gianetta, Higgins, Lynch, Baner and Della Rocca) (the "municipal defendants") also move for partial summary judgment. Plaintiff cross-moves for summary judgment on his claims against the municipal defendants. For the reasons that follow, defendants, motions to dismiss are granted, the municipal defendants' motion for partial summary judgment is granted, and plaintiff's cross-motion for partial summary judgment is denied. Plaintiff's claims are dismissed with prejudice.

I. **Introduction**

This case brings into stark contrast the tension between the long-standing statutory right of access to the United States courts by *pro se* litigants and the increasing need to protect scarce judicial resources. Each year, the volume of lawsuits filed without benefit of legal counsel grows larger. The *pro se* docket is akin to the proverbial haystack, and the needless hidden therein may seem at times to be few and far between. Yet only recently the Court of Appeals issued a reminder that the law does not permit premature dismissal of arguably meritorious claims brought *pro se*. See Koehl v. Dalsheim, 85 F.3d 86, 89 (2d Cir. 1996). If a *pro se* plaintiff pays the required $120 filing fee, a district court is required to countenance even what appear to be fantastic and delusional claims. See Neitzke v. Williams, 490 U.S. 319, 327 (1988) ("Rule 12(b)(6) does not countenance . dismissals based on a judge's disbelief of a complaint's factual allegations") . But see Parris v. Kelly, No. 93 Civ. 7391, 1993 WL 497979 (S.D.N.Y. Nov. 30, 1993) (dismissing fantastic and delusional action *sua sponte* even though plaintiff paid filing fee).

A *pro se* party's motions must be "liberally construed" in his or her favor and are held to "less stringent standards than formal pleadings drafted by lawyers," Hughes v. Rowe, 449 U.S. 5, 10 (1980) (per curiam) (citing Haines v. Kerner , 404 U.S. 519, 520 (1972)). In addition, this Circuit has held that "implicit in the right to self-representation is an obligation on the

part of the court to make reasonable allowances to protect *pro se* litigants from inadvertent forfeiture of important rights because of their lack of legal training. Traguth v. Zuck, 710 F.2d 90, 95 (2d Cir. 1983).

Certain *pro se* cases consume more resources than others. Plaintiff's Complaints, for example, have generated hundreds of pages of motion papers and affidavits from defendants. Were I to address each of plaintiff's claims individually — and each defendant's corresponding arguments –this Opinion would be the length of a Tom Clancy novel. However, the legal issues raised by plaintiff's claims and defendants motions are not terribly complex. Furthermore, many of the defendants' motions share common ground. Thus, for efficiency's sake, I will address plaintiff's claims and defendants' motions in appropriate groups.

II. Procedural Background

On April 15, 1993, plaintiff was indicted for unlawfully entering the apartment of his employer Marla Maples, and stealing various items of her property. He was charged with second degree burglary and fourth degree criminal possession of stolen property in violation of New York Penal Law §§ 140.25(2) and 165.45(l). Because a search of plaintiff's office revealed a loaded .25 caliber semi-automatic pistol, he was also charged with criminal possession of a weapon in the fourth degree under New York Penal Law § 265.02(l).

Plaintiff was convicted of all charges after a three week-jury trial, and was sentenced to one and one-half to four and one-half years in prison. Plaintiff's appeals in the state courts were unsuccessful. However, in an Order issued on September 19, 1996, I granted his habeas petition for a new trial on the ground that the trial court committed reversible error in banning plaintiff from consulting with his attorney during his trial. See Jones v. Vacco, No. 96 Civ. 4907, 1996 WL 535544 (S.D.N.Y. Sept. 19, 1996). The government's appeal of the September 19, 1996 Order is pending.

Plaintiff's Complaints are, for the most part, based on claims arising from the events surrounding the searches of his office and home, his arrest, prosecution, and subsequent conviction. His initial action ("Jones I") was filed in the District of Connecticut on June 26, 1995. This action was then transferred to the Southern District of New York under docket number 96 Civ. 2995. Plaintiff filed an Amended Complaint in Jones I on December 3, 1996. Plaintiff's second action ("Jones III') was originally filed on September 12, 1996 under docket number 96 Civ. 6927. Plaintiff filed an Amended Complaint in Jones II on December 31, 1996.

III. Discussion

A.Cross-Motions for Partial Summary Judgment

1. Applicable Legal Standard

A party is entitled to summary judgment when there is "no genuine issue of material fact" and the undisputed facts warrant judgment for the moving party as a matter of law. See Fed.R.Civ.P. 56(c); Celotex v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). The burden of demonstrating the absence of a material factual dispute rests on the moving party. See Gallo v. Prudential Residential Svcs., Ltd.-, 22 F.3d 1219, 1223 (2d Cir. 1994). Once that burden is met, the non-moving party must present "significant probative supporting evidence" that a factual dispute exists. Fed. R. Civ.P.56(e);Anderson, 477 U.S. at 249.

The court's role is not to try issues of fact, but rather to determine whether issues exist to be tried. See Balderman v. United States Veterans Admin., 870 F.2d 57, 60 (2d Cir. 1989); Donahue v. Windsor Locks Bd. of Fire Commlrs, 834 F-2d 54, 58 (2d Cir. 1987). All ambiguities must be resolved and all inferences drawn in favor of the party against whom summary -Judgment is sought. Anderson, 477 U.S. at 255; Donahue, 834 F.2d at 57, 60. If there is any evidence in the record from which a reasonable inference could be drawn in favor of the nonmoving party on a material issue of fact, summary judgment is improper. See Chambers v. TRM Copy Centers Corp.-, 43 F.3d 29, 37 (2d Cir. 1994).

2.Municipal Defendants' Motion for Partial Summary Judgment

Pursuant to Rule 56 and New York General Municipal Law 50-e and 50-i, the municipal defendants move for summary judgment on plaintiff's state law tort claims. Sections 50-e and 50-i require a plaintiff asserting a state law tort claim against a municipal entity or its employees to file a notice of claim against the City within ninety days of the occurrence giving rise to the claim and commence that action within a year and ninety days. See Annis v. N.Y.C. Transit Authority, 485 N.Y.S.2d 529, 531 (lst Dep't 1985). Furthermore, plaintiff must affirmatively plead service of the notice of claim, the passage of thirty days since service, and the failure of the city to satisfy or adjust the claim. See Davidson v. Bronx Municinal Hospital, 484 N.Y.S.2d 533, 534-35 (1984). Plaintiff's failure to comply with these pleading rules requires dismissal of these claims.

Plaintiff did in fact file a notice of claim on December 22, 1995, although he failed to state this in his pleadings. This notice of claim relates to the events that form the basis for Jones II. See Declaration of Brigitte Duffy, Counsel to Municipal Defendants ("Duffy Decl.11), dated February 26, 1997, Ex. F. Review of the notice of claim indicates that plaintiff did not identify his claim for defamation, intentional infliction of emotional distress, assault or battery on the notice of claim form. He therefore failed to effectively file a notice of claim for these claims as required by statute. As notice of claim to include these claims within the statutory period —

that-is, within a year and ninety days of the December 10, 1995 incident --- he cannot do so now. See Pierson v. City of New York, 453 N.Y.S.2d 615, 617 (1982). The municipal defendants are therefore entitled to judgment as a matter of law with regard to these claims.Plaintiff's remaining state law tort claims are for false arrest and wrongful imprisonment. Defendants move for summary judgment with regard to these claims on the grounds that they are barred by the applicable one year statute of limitations. See N.Y.C.P.L.R. § 215(3). All of plaintiff's state law claims arose from events that took place in July of 1992. Plaintiff's earliest claims for false arrest and wrongful imprisonment were filed in 1995. They are therefore barred by the applicable statute of limitations, and defendants are entitled -to judgment as a matter of law.

3.Plaintiff's Cross-motion for Summary Judgment

As discussed above, the municipal defendants are entitled to summary judgment as to plaintiff's state law tort claims against them. As these claims must therefore be dismissed pursuant to Fed R.Civ.P.56, plaintiff's motion for partial summary judgment on these claims cannot succeed.

B.Rule 12(b)(6)

1.Applicable Legal Standard

In deciding a Rule 12(b)(6) motion to dismiss, a court must accept as true material facts alleged in the complaint and draw all reasonable inferences in the nonmovant's favor. Kaluczky v. City of White Plains, 57 F-3d 202, 206 (2d Cir.1995). Such a motion cannot be granted simply because recovery appears remote or unlikely on the face of a complaint, because the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Bernheim v. Litt, 79 F.3d 318, 321 (2d Cir. 1996) (quoting Villager Pond, Inc. v. Town of Darien, 56 F.3d 375, 378 (2d Cir. 1995) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)), cert. denied, 117 S.Ct. 50 (Oct. 7, 1996)). Rather, dismissal can only be granted if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Scheuer v. Rhodes, 416 U.S. at 236.

Typically, in deciding a motion to dismiss a district court will outline the required elements for each cause of action set forth in the complaint and discuss whether the factual allegations in the pleadings can survive a 12(b)(6) motion to dismiss. Unfortunately, the number of claims set forth in these two Complaints prevents such an approach. This Opinion therefore addresses the specific deficiencies in plaintiff's claims only where necessary.

2.Plaintiff's Malicious Prosecution Claim

A large cluster of plaintiff's claims arise out of an alleged malicious prosecution on the part of multiple defendants. An essential element of this tort is the termination of the proceeding in favor of the accused. See Witcher v. Children's Television Workshop, 589 N.Y.S.2d 454, 454 (lst Dep't 1992) (citing Broughton v. State of New York, 373 N.Y.S.2d 87, cert. denied sub. nom. Schanbarger v. Kellogg, 423 U.S. 929 (1975). While plaintiff's habeas petition was granted, this ruling merely gave plaintiff the right to a new trial. See Jones v. Vacco, No. 96 Civ. 4907, 1996 WL 535544 (S.D.N.Y. Sept. 19, 1996). No new trial has taken place to date. As a result, the criminal case has not been "terminated" in plaintiff's favor. Because plaintiff has not --- and cannot --- allege facts sufficient -to constitute a *prima facie* claim for malicious prosecution, all such claims must be dismissed pursuant to Fed.R.C 12(b)(6). Furthermore, all claims based on the allegedly, malicious prosecution --- specifically, plaintiff's extortion claims --- must also be dismissed.

3.Plaintiff's Claims for Intentional Infliction of Emotional Distress, Abuse of Process, Conspiracy, Breach of Fiduciary Duty, Invasion of Privacy, Violation of the New York Constitution, and Fraud.

The required elements for each of the claims listed above are well-established. See, e.g., Howell v. New York Post Co., 596 N.Y.S.2d 350, 352-54 (1993) (intentional infliction of intentional infliction of emotional distress and invasion of privacy); Curiano v. Suozzi, 480 N.Y.S.2d 466, 468 (1984) (abuse of process); Zemsky v. City of New York, 821 F.2d 148, 151 (2d Cir.) (conspiracy), cert. denied, 484 U.S. 965 (1987); V. Ponte & Sons, Inc. v. American Fibers Int'l, 635 N.Y.S.2d 193, 194 (1st Dep't 1995) (breach of fiduciary duty); People v. Cibelli, 404 N.Y.S.2d 811, 813 (Sup. Ct. Suffolk Co. 1978) (New York Constitution); Jo Ann Homes v. Dworetz, 302 N.Y.S.2d 799, 803 (1969) (fraud). A thorough review of plaintiff's Complaints reveals that they fail to set forth allegations which, even if presumed to be true for purposes of a motion to dismiss, constitute a *prima facie* case against any defendant for any of the above claims . These claims are therefore dismissed pursuant to Rule 12(b)(6).

4.Plaintiff's Defamation Claims

The Second Circuit has held that "a plaintiff's reputation with respect to a specific subject may be so badly tarnished that he cannot be further injured by allegedly false statements on that subject." Guccione v. Hustler Magazine, Inc.,800 F.2d 298, 303 (2d Cir. 1986), cert. denied, 479 U.S. 1091 (1987). Such a plaintiff is known as a "libel-proof plaintiff", and cannot succeed on a claim for libel or defamation where "the allegedly libelous statement cannot realistically cause impairment of reputation because the person's reputation is already so low." Id. Plaintiff has already been held to be "libel-proof" as to his reputation regarding his arrest and subsequent conviction for burglary and unlawful possession of property. See Jones v. The Globe Int'l, Inc. et al., 94 Civ. 1468, 1995 WL 819177 at *9-*11 (D. Conn. Sept. 26, 1995) ("The true facts surrounding the plaintiff's criminal conviction along with the unchallenged statements in the articles at issue, had a devastating impact upon the plaintiff's reputation.") . Because this issue has already been resolved adversely to plaintiff,' plaintiff is collaterally estopped from litigating the same issue in this action, and his claims for defamation must be dismissed pursuant to Rule 12(b)(6). See, e.g., Gelb v. Royal Globe ins. Co., 798 F.2d 38, 44 (2d Cir. 1986), cert. denied, 480 U.S. 948 (1987).

5.Plaintiff's Breach of Contract Claims

Plaintiff's breach of contract claims rest on alleged oral agreements with various defendants, such as a marriage brokerage contract with Marla Maples and an agreement with Donald Trump and other defendants to discontinue their participation in plaintiff's criminal prosecution. Even if such contracts existed, they would be unenforceable under New York law. See State v. Leifer, 392 N.Y.S. 2d 175, 177 (Sup. Ct. N.Y. Co. 1976) ("Marriage brokerage contracts have been held void as against public policy in New York") (citing, *inter* alia, Duval v. Wellman, 124 N.Y. 156 (1891)); Doucet v. Massachu'setts Bondincr Ins. Co., 167 N.Y.S. 892 (1917) (agreement to refrain from pursuing or assisting with a criminal proceeding is void as against public policy). These claims must therefore be dismissed pursuant to Rule 12(b)(6).

6.Plaintiff's § 1983 Claims

Plaintiff alleges various defendants violated his Fourth Amendment right against unreasonable searches and seizures during the search of plaintiff's office on July 15, 1992. In a decision dated

January 19, 1994, Justice Andrias (then of the New York Supreme Court) determined that the search of plaintiff's office did not violate plaintiff's Fourth Amendment ri because plaintiff consented to the search at the time. See Duffy Decl., Ex. C. Thus, plaintiff is now collaterally estopped from bringing a claim under § 1983 based on the allegation that defendants violated his Fourth Amendment rights by searching his office. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 85 (1984); Allen v. McCurry, 449 U.S. 90, 105 (1980).

Plaintiff also claims that certain defendants violated his Fourth Amendment rights by making false statements in order to search his Connecticut home. These claims must also fail. The law enforcement officials who lawfully searched plaintiff's New York office discovered evidence that indicated that plaintiff had stolen Marla Maples' property and that he was in unlawful possession of a firearm . This evidence provided sufficient grounds to find that probable cause existed to search plaintiff's Connecticut home for additional evidence. Thus, a warrant to search the Connecticut home could have been issued even if defendants had not made the allegedly false statements that plaintiff consented to a search of his New York office and he possessed personal property of Marla Maples. As defendants' allegedly false statements were not a necessary basis on which the warrant for the Connecticut home was issued, plaintiff's claims relying on the allegedly fraudulent procurement of a search warrant must be dismissed pursuant toRule 12(b)(6). See Franks v. Delaware, 438 U.S. 154, 155-SG (1978) (allegedly false statement made to procure warrant must be necessary to finding of probable cause to implicate Fourth Amendment rights).

7. Plaintiff's Trespass, Theft and Conversion Claims

Plaintiff asserts claims for trespass, theft and conversion based on alleged damage to or seizure of his property during defendants' search of plaintiff's office. The New York courts have already found that this search and the related seizures were constitutionally valid. See Duffy Decl., Ex. C. Plaintiff's claims for trespass and conversion, therefore, cannot provide a basis for relief and must be dismissed under Rule 12(b)(6). See, e.g., East Coast Novelty v. City of New York, 809 F. Supp. 285, 302 (S.D.N.Y. 1992) ("Federal courts and the courts of the State of New York consistently hold that an officer who entered premises pursuant to a valid search warrant cannot be

held liable for trespass") (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 489 n.3 (1986)); Key Bank of New York v. Grossi, 642 N.Y.S.2d 403, 405 (3d Dep't 1996) (conversion claim requires allegation that property is in the unauthorized possession of another who has acted to exclude the rights of the owner).

8.Plaintiff's RICO Claims

Plaintiff's RICO claims are brought under 18 U.S.C. § 1962(b), (c) and (d). Plaintiff has failed to allege facts sufficient to state a claim under any of these statutes. See United States v. Ianniello, 808 F.2d 184, 192 (2d Cir. 1986) 1962(b)), cert. denied, 483 U.S. 1006 (1987); Reves v. Ernst Young, 507 U.S. 170, 183 (1993) (§ 1962(c)); Hecht v. Commerce Clearing House. Inc., 897 F.2d 21, 25 (2d Cir. 1990) (§ 1962(d)). Accordingly, his claims must be dismissed under Rule 12(b)(6).

Furthermore, the factual allegations on which plaintiff's RICO claims are based have already been rejected by prior courts. For example, in People v. Jones, No. 3108/93'(Sup. Ct. N.Y. Co. Jan. 19, 1994), Justice Andrias rejected plaintiff's Fourth Amendment claims, as well as his claims for false imprisonment and unlawful arrest. See Affidavit of Michael Berger ("Berger Aff."), dated February 28, 1997, Ex. A. Furthermore, plaintiff raised virtually identical conspiracy claims in a § 1983 action brought in state court. In Jones v. The Plaza Hotel. et al., No. 117696/93 (Sup. Ct. N.Y. Co. Sept. 30, 1996), Justice York held that plaintiff was collaterally estopped from bringing these claims as they relied on factual allegations already determined adversely to plaintiff Andrias. See Berger Aff., Ex. B. Plaintiff is therefore collaterally estopped from bringing the same --- or virtually identical --- conspiracy claims in this or any other forum. See Central Hudson Gas & Elec. v. Empresa-Naviera, 56 F.3d 359, 36667 (2d Cir. 1995) .

9.Summary of Claims Dismissed Pursuant to Rule 12(b)(6)

To summarize, plaintiff's claims for malicious prosecution, extortion, intentional infliction of emotional distress, abuse of process, conspiracy, breach of fiduciary duty, invasion of privacy, violation of the New York Constitution, fraud, defamation, breach of contract, violation of § 1983, trespass, theft, conversion, and violation of the RICO statute must all be dismissed under Rule 12(b)(6) as they fail to state a claim for which relief can be granted.

C. Rule 8

Designed to shelter both litigants -and courts from the expense and delay that result from prolix pleadings, Rule 8 of the Federal Rules of Civil Procedure provides that a pleading shall contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ. P. 8(a)(2). "Each averment of a pleading shall be simple, concise, and direct." Fed.R.Civ.P.8(e)(1). More specifically, "complaints which ramble, which needlessly speculate, accuse and condemn, and which contain circuitous diatribes far removed from the heat of the claim do not comport" with the requirements of Rule 8. Jones v. Capital Cities/ABC Inc., 874 F. Supp. 626, 628 (S.D.N.Y. 1995) (quoting Prezzi v. Berzak, 57 F.R.D. 149, 151 (S.D.N.Y. 1972)). Accord Prezzi v. Schelter, 469 F.2d 691, 692 (2d Cir. 1972) *(per curiam)* (dismissing 88-page *pro se* complaint for failure to meet Rule 8 requirements), cert. denied, 411 U.S. 935 (1973). A complaint that does not comply with Rule 8's requirements may be dismissed *sua sponte* by the Court. See Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988).

Dismissal pursuant to Rule 8 is "usually reserved for those cases in which the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised," and leave to file an amended pleading that conforms to Rule 8 is usually granted. Id. (citing Gillibeau v. City of Richmond, 417 F.2d 426, 431 (9th Cir. 1969)). However, where successive pleadings remain prolix and unintelligible, or where the substance of the claim pleaded is frivolous on its face, leave to amend may properly be denied. Id. (citing , 469 F.2d at 692 and Moorish Science Temple of America, Inc. v. Smith, 693 F.2d 987, 990 (2d Cir. 1982)).

Even keeping in mind the relaxed pleading requirements to which *pro se* litigants are held, the two Complaints filed in this law suit manifestly violate Rule 8. Besides their needless length and complexity, they contain allegations that are scandalous, impertinent, immaterial and provocative. Fed. R.Civ.P.12(f) (court may order stricken from pleadings any "redundant, immaterial, impertinent, or scandalous matter"). Furthermore, because they include myriad and repetitious factual allegations that are unrelated to plaintiff's claims, the Complaints are unfairly confusing. The Court of Appeals has held that such "unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage. Salahuddin, 861 F.2d at 42 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1281, at 265 (1969)). Rule 8 therefore provides the final basis to dismiss plaintiff's Complaints in their entirety. Plaintiff's leave to replead will be addressed in Part IV of this opinion.

IV. Denial of Leave to Replead

Rule 15(a) of the Federal Rules of Civil Procedure provides that the court should grant leave to amend "freely . . . when justice so requires." The Second Circuit has noted that "[w]hen a motion to dismiss is granted, the usual practice is to grant leave to amend the complaint.' . . . Although the decision whether to grant leave to amend is within the discretion of the district court, refusal to grant leave to amend must be based a valid ground." Oliver Schools. Inc. v. Foley, 930 F.2d 248, 253 (2d Cir. 1991) (quoting Ronzani v. Sanofi S.A., 899 F.2d 195, 198 (2d Cir. 1990) (quotations omitted)). Where the possibility exists that the defect can be cured, leave to amend at least once should normally be granted unless doing so would prejudice the defendant. Oliver Schools, Inc., 930 F.2d at 253 (2d Cir. 1991).

The large majority of plaintiff's dismissed claims cannot be cured by amending the Complaints for a second time. For example, those claims that are barred by the statute of limitation, or the doctrine of *res judicata*, cannot succeed no matter how they are pleaded. Similarly, plaintiff's malicious prosecution claim cannot succeed until the criminal action brought against him is finally resolved plaintiff cannot succeed in a claim for defamation because he is "libel-proof"; plaintiff's alleged contracts are unenforceable under New York law; plaintiff's RICO and § 1983 claims are collaterally estopped; and plaintiff's trespass and conversion claims cannot succeed because the search and seizure of plaintiff's office and home were lawfully conducted.

More importantly, however, I find that given the fantastic and delusional nature of plaintiff's claims it would be unfairly prejudicial to defendants to require them to undergo the expense of responding to yet another amended version of plaintiff's claims. Justice and the Rules of Civil Procedure require that a *pro se* plaintiff be allowed to amend his pleadings so that arguably meritorious claims may be heard in a court of law. I am convinced that none of plaintiff's claims are arguably meritorious, and are rather an attempt to use the courts to harass defendants through a continued course of vexatious litigation. Plaintiff's claims are therefore denied with prejudice.

Finally, I note that the Second Circuit has recently confirmed that a district court may enjoin a litigant fr om filing further related actions in any federal court where that person "abuse(s] the process of the Courts to harass and annoy others with meritless, frivolous, vexatious or repetitive . . . proceedings". Malley v..N.Y.C. Bd. of Educ., -- F.3d --, No. 96 Civ. 9013, 1997 WL 195425, *1 (2d Cir. Apr. 23, 1997) (quoting In re Martin-Trigona, 737 F.2d 1254, 1261 (2d Cir. 1984), cert. denied, 474 U.S. 1061 (1986)). Plaintiff has already commenced two actions in state court and five

actions in federal court, all of which are essentially related to the same events. While not all of these actions have been resolved by a final judgment, I note that if plaintiff files any future actions related to the events from which these prior seven actions arose that are deemed "meritless, frivolous, vexatious or repetitive," he may be subject to an injunction barring him from filing subsequent actions of this nature in the courts of the United States.

V. Conclusion

For the reasons set forth above, the municipal defendants' motion for partial summary judgment is granted with regard to plaintiff's state law claims against them. Plaintiff's cross-motion for partial summary judgment is denied. Defendants' motions are granted pursuant to Rules 12(b)(6) and 8 of the Federal Rules of Civil Procedure with regard to each of plaintiff's claims. Accordingly, it is hereby

ORDERED that plaintiff's claims are dismissed in their entirety with prejudice; and it is furthermore

ORDERED that the Clerk of the Court close this case.

SHIRA A. SCHEINLIN, *.D J.*

S/_____

Dated: New York, New York May 22, 1997

FOOTNOTES:

1. Plaintiff's Amended Complaint in the initial action, filed under docket number 96 Civ. 2995, is 83 pages long, and contains 23 causes with a total of 30 claims. Plaintiff's Amended Complaint in the second action, filed under docket number 96Civ. 6927, is 42 pages long, contains 12 causes of action, with a total of 24 claims.

2. 28U.S.C.1654 (1948) permits pro se litigants personally to plead, manage and conduct their own cases. See Phillips v. Tobin,548 F. 2d 408, (2nd Cir. 1976).

3. In 1996, 2,293 actions were filed pro se in this district. This figure is only a moderate increase from 2,256 pro se actions filed in 1995, but is an approximately 12% increase from the 2,014 pro se actions filed in 1994. The pro se office of the southern district of New York estimates that the Number of actions filed pro se has increased roughly 10% to 15% each year since 1989.

4. By contrast, where a plaintiff applies for and is granted in forma pauperis status, a district court not only has the authority under 28 U.S.C. 1915 (e)(2) to "dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those complaints whose factual contentions are clearly baseless." Denton v. Hernandez, 504 U.S. 25, 32 (1992) (quotation omitted).

5. Plaintiff also pleads a claim for "harassment." Because New York law does not recognize any independent tort for "harassment," I interpret plaintiff's claim to be one for intentional infliction of emotional distress.

6. For example, an action for breach of fiduciary duty must first allege facts sufficient to establish the existence of a fiduciary duty on defendant's part to the plaintiff. See American Fibers Int'l, 635 N.Y.S.2d at 194. Plaintiff has failed to allege any facts that — even if presume to be true --establish that any defendant owed him a fiduciary duty. 'therefore plaintiff's claim for breach of fiduciary duty must be dismissed pursuant to Rule 12(b)(6)

7. That plaintiff's conviction was subsequently vacated pursuant to his habeas petition because of a procedural error b), the trial court does not alter that fact that his diminished reputation renders him libel-proof.

8. Plaintiff's office was searched after Marla Maples noticed that several of her shoes were missing from her apartment and after a privately installed video camera revealed that plaintiff had entered her apartment in July, 1992.

9. Because New York common law does not recognize an independent tort of theft or larceny, I interpret plaintiff's claim for "theft" to be one for conversion.

10. If a new trial is held and plaintiff is acquitted, he may then have a claim for malicious prosecution. However, that claim would have to be filed in a new action.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES JONES, **OPINION AND ORDER**

Plaintiff,

-against - **96Civ2995(SAS)**

DONALD J. TRUMP, MARLA MAPLES PLAZA HOTEL, a/k/a PLAZA OPERATING PARTNERS, LTD., JANE ELDER, RICHARD FIELDS ANN OGLETREE, DOMENIC PEZZO, MATTHEW CALAMARI, THE TRUMP ORGANIZATION, MICHAEL BERGER, JAY GOLDBERG, CITY OF NEW YORK, DOREEN KLEIN, individually and as an Assistant District Attorney for the County of New York, ROBERT GIANETTA, BRIAN HIGGINS, JOHN BANER and WILLIAM LYNCH, individually and as police officers of the City of New York, JEANINE PIRRO, individually and as District Attorney, County of Westchester, ALBERT PIRRO, Jr., ROBERT M. MORGENTHAU, individually and as District Attorney of New York, CDL Hotels,

Defendants.

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CHARLES JONES,

Plaintiff,

- against - **96Civ.6927 (SAS)**

MARLA MAPLES TRUMP, DONALD J. TRUMP, THE PLAZA HOTEL, ROBERT M. MORGENTHAU, DOREEN KLEIN, THE TRUMP ORGANIZATION, JEANINE PIRRO, ALBERT PIRRO, Jr.,MATTHEW CALAMARI, JOHN BANER, DOMENIC PEZZO, ROBERT GIANETTA, DELLA ROCCA, THE CITY OF NEW YORK, JANE ELDER,FREDERICK COHN, EXECUTIVE PLAZA CONDOMINIUM, CDL HOTELS, MICHAEL BERGER, RICHARD FIELDS,

Defendants.

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SHIRA A. SCHEINDLIN, **District Judge:**

In an opinion and Order issued on May 22, 1997, I granted defendants, motion to dismiss and the municipal defendants, motions for partial

summary judgment with prejudice, and denied plaintiff's cross-motion for partial summary judgment. See Jones v. Trump et al., Nos. 96 Civ. 2995 and 96 Civ. 6927, 1997 WL 277375 (S.D.N.Y. 1997). Plaintiff now moves pursuant to Rules 59(e) and 60(b)l to amend, alter or vacate the May 22 Opinion and Order. For the reasons set forth below, this motion is partially granted.

1. **Factual and Procedural Background**

Familiarity with the facts and procedural history of this case is presumed. For a full account, see Jones, 1997.WL 277375 at *1.

II. **Applicable Legal Standard Under Rules 59(e) and 60**

A. Rule 59(e)

The legal standards for granting relief under Rule 59(e) are equivalent to those that apply to a motion for. reargument under Local Rule 6.3.' See Cohen v. KoeniG, 932 F. Supp. 505, 506 (S.D.N.Y. 1996); Farkas v. Ellis, 783 F Supp. 830, 832-33 & n.1 (S.D.N.Y.), aff,d, 979 F.2d 845 (2d Cir. 1992). Local Rule 6.3 states in pertinent part:

> A notice of motion for reconsideration or reargument shall be served within ten (10) days after the docketing of the court's determination of the original motion and . . . shall be served with . . . a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. . . . No oral argument shall be heard unless the court grants the motion and specifically directs that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court.

Local Civil Rule 6.3. To satisfy this rule, the moving party must set forth a matter or controlling decision overlooked by the court in its initial review of the motion. See, e.g., Farkas v. Ellis, 783 F. Supp. at 832 ("The standard for granting a motion for reargument is strict in order to preclude repetitive arguments on issues that have already been considered fully by the court."). If the court finds the motion for reargument is warranted, the court may either direct the parties to reargue their motions orally or rely on the submissions as made. See New York City Department of Finance, et al.-v. Twin Rivers, Inc., 929 F.Supp. 172, 173 (S.D.N.Y. 1996).

B. Rule 60 (b)

Rule 60(b) of the Federal Rules of Civil Procedure is an attempt by the federal judicial system to balance the occasionally conflicting goals of finality and fairness.' The Rule "provides courts with authority to enable them to vacate judgments whenever such action is appropriate to accomplish justice,, but such authority "should only be applied in extraordinary circumstances." Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863 (1988) (citations and quotations omitted). Therefore, a motion

under Rule 60(b) "is addressed to the sound discretion of the trial court," Matter of Emergency Beacon Corp., 666 F.2d 754, 760 (2d Cir. 1981), whose "disposition of the motion will not be disturbed on appeal absent an abuse of that discretion." National Petrochemical Co. v.M/T Stolt Sheaf, 930 F.2d 240, 244 (2d Cir. 1991).

It is beyond question that Rule 60(b) is not intended to substitute for a direct appeal from an erroneous judgment. See Ackermann v. United States, 340 U.S. 193, 198-9 (1950); Matarese v. LeFevre, 801 F.2d 98, 106-7 (2d Cir. 1986). It is not appropriate for a district court to vacate an order under Rule 60(b) where "[n]o additional claims are advanced," and where movants "simply argue on the same facts that there are 'extraordinary circumstances' justifying the exercise of the district court's equitable powers.', Cruickshank & Co. v. Dutchess Shipping Co., 805 F.2d 465, 469 (2d Cir. 1986).

III. Discussion

I have reviewed plaintiff's Memorandum of Law in Support of Motion ("Plaintiff's Mem."), Supplemental Memorandum of Law in Support of Motion ("Plaintiff's Supp. Mem."), Plaintiff's Reply Memorandum of Law in Support of Motion ("Reply Mem.") as well as plaintiff's supporting affidavit. To a large extent, plaintiff repeats claims already considered and rejected in the May 22 Opinion and Order, and I need not address those arguments. However, plaintiff does raise several errors and ambiguities in the May 22 Opinion and Order which warrant further discussion.

A.Plaintiff's State Claim for Intentional Infliction of Emotional Distress

The May 22 Opinion and Order stated: "Review of the notice of claim indicates that plaintiff did not identify his claim for . . . intentional infliction of emotional distress, assault or battery on the notice of claim form. He therefore failed to effectively file a notice of claim for these claims as required by statute.,, Jones, 1997 WL 277375 at *3. In fact, this finding was inaccurate with regard to plaintiff's claim for intentional infliction of emotional distress. Plaintiff's notice of claim form indicates at the section of the form entitled "4. Items of damage or injuries claimed", plaintiff wrote the following:

Injury Right Shoulder, Injury Hand (handcuffs applied too tight).....Intentional Infliction of Emotional Distress

See Declaration of Brigitte Duffy, Counsel to Municipal Defendants ("Duffy Decl."), dated February 26, 1997, Ex. F. Without doubt, the Notice of Claim form intends all claims to be listed in section entitled "2. The nature of the claimil. Yet because the municipal defendants were not prejudiced by this minor irregularity, plaintiff cannot be deemed to have failed to identify his intentional infliction of emotional distress claim simply because he listed it in the wrong part of the notice of claim form. See D'Alessandro v. NYC Transit-..Authority, 613 N.Y.S.2d 849, 850 (1994)

("In passing on the sufficiency of a notice of claim . . . General Municipal Law § 50-e(6).....provides that la mistake, omission, irregularity or defect made in good faith . . . may be corrected, supplied or disregarded, as the case may be, in the discretion of the court, provided it shall appear that the other party was not prejudiced thereby."'). I therefore amend the May 22 Opinion and Order to the extent that it held otherwise.

Nevertheless, plaintiff's intentional infliction of emotional distress claim cannot survive defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be based. To establish a *prima facie* claim for intentional infliction of emotional distress, plaintiff must allege facts that satisfy four elements: (1) extreme and outrageous conduct; (2) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (3) a causal connection' between the conduct and the injury; (4) severe emotional distress. See Howell v. New York Post Co., Inc.-, 596 N.Y.S.2d 350, 353 (1993). To satisfy the first element, plaintiff must allege conduct that is "so outrageous in character,-and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.,, Id. (quotation omitted).Furthermore, the conduct alleged must "be intentionally directed at plaintiff and lack any reasonable justification.,, Martin v. Citibank, N.A., 762 F.2d 212, 220 (2d Cir. 1985). This standard was set deliberately high by the Court of Appeals in order to"filter[] out petty and trivial complaints that do not belong in court" and to "assur[e] that plaintiff's claim of severe emotional distress is genuine." Howell, 596 N.Y.S.2d at 353.

Plaintiff's claims fall short of meeting the strict requirements for the tort of intentional infliction of emotional distress under New York law because no individual defendant is alleged to have actually commited any overt act or series of acts that in themselves meet those requirements. See Plaintiff's Amended Complaint, 96 Civ. 6927 ("Jones II") at 182-185, 197-201. Rather, from what can be understood from plaintiff's lengthy and complex pleadings, defendants appear to be accused of conspiring to oppress and abuse plaintiff in a variety of ways. Plaintiff cannot rest his intentional infliction of emotional distress claim merely on defendants, alleged agreement to collaborate against him, and New York common law does not recognize an independent tort for conspiracy. See Heinfling v. Colaipinto, 946 F. Supp. 260, 265 (S.D.N.Y. 1996) (citing Grove Press, Inc. v. Angleton, 649 F.2d 121, 123 (2d Cir. 1981)). Instead, he must set forth, clearly and concisely, allegations of specific instances of each individual defendant's conduct that rise to the level of "extreme and outrageous" conduct.Plaintiff's Amended Complaint fails to do this.

For example, plaintiff's claims for intentional infliction of emotional distress rely on generalized and conclusory statements such as the following:

> The defendants, false criminal charges against plaintiff and subsequent false arrest, false investigation and false imprisonment of plaintiff, because of defendants, knowledge of lack of probable cause or justification, were intentional, malicious . . . recklesss and in bad faith, constituting conduct that is so egregious as to shock the conscience . . . .

See Amended Complaint at 183. Similarly, plaintiff alleges "the acts and actions of defendants, as are more fully described and set forth in paragraphs 1-68 of the Amended Complaint, constitute intentional infliction of emotional distress". Id. at 199. Yet those paragraphs of plaintiff's Amended Complaint fail to allege "extreme and outrageous" conduct pertaining to any individual defendant. Because the pleadings fail to set forth allegations of conduct pertaining to any individual defendant that rise to the level required by New York law for claims of this sort, defendants' motion to dismiss plaintiff's claims for intentional infliction of emotional distress pursuant to Rule 12(b)(6) must be granted.

B.Plaintiff's Contract Claims

Plaintiff argues that as his alleged contracts with Maples, Trump and various other defendants were formed in the State of Connecticut, Connecticut law should apply to th resolution of defendants' motion to dismiss. Thus, he argues, citations to New York cases to support the proposition that the alleged contracts are void as against public policy are inapposite. This argument fails to breathe new life into plaintiff's contract claims because it is well-established under Connecticut law that contracts that violate public policy are unenforceable. See Silver v. Jacobs, 43 Conn.App. 184, 189 (Conn. App. Ct. 1996) (citing, inter alia, Konover Development Corp. v. Zeller, 228 Conn. 206, 231 (1994)). It is equally well recognized that marriage brokerage contracts are contrary to public policy. See, Restatement (First) of Contracts § 582; 52 Am.Jur. § 184 ("Contracts designed to bring about a marriage between one of the parties to the contract and a third person, or between two strangers to the contract, are universally held to be against public policy and void."). Furthermore, it can scarcely be debated that agreements to refrain from assisting with a criminal prosecution violate public policy by undermining society's criminal laws. See Silver, 43 Conn.App. at 190 ("Where a law is passed for the protection of the public, we will not undermine the remedial purposes of the statute by enforcing an oral contract in contravention of the law.,,). Plaintiff's contract claims must therefore be dismissed.

C. Plaintiff's Prior Indictments

Plaintiff takes issue with the following statement in the May 22 Opinion and Order: "On April 15, 1993, plaintiff was indicted for unlawfully entering the apartment of his employer, Marla Maples, and stealing various items of her property.,, Plaintiff contends that he was never charged with "stealing", and that the Court should have merely stated that he was charged with and indicted for second degree burglary and fourth degree criminal possession of stolen property. To the extent that the above-quoted statement of the May 22 Order and Opinion was erroneous, it is hereby amended to reflect the actual charges contained in the indictment.

D. Plaintiff's Claims for False Arrest and Unlawful Imprisonment

Plaintiff points out another inaccurate statement in the May 22 Opinion and Order: it is not true that 11[alll of plaintiff's state law claims arose from events that took place in July of 1992.11 See Jones, 1997 WL 277375, at * 3. Rather, Plaintiff's false arrest and unlawful imprisonment claims in Jones II (96 Civ. 6927) arose from plaintiff's arrest on October 5, 1995. As plaintiff's Amended Complaint in Jones II was filed on September 12, 1996, these claims were not barred by the one-year statute of limitations as I ruled in the May 22, 1997 Opinion and Order.Nevertheless, plaintiff's claims for false arrest and his § 1983 claim for false arrest, cannot survive a Rule 12(b)(6) motion to dismiss. An essential element of all three claims is that defendants were not entitled to confine plaintiff. Where an arrest is made pursuant to a warrant, there can be no claim for false arrest or unlawful imprisonment. See Singer v. Fulton County Sheriff, 63 F.3d 110, 118-119 (2d Cir. 199S). As plaintiff concedes, he was arrested on October 5, 1995 pursuant to a warrant issued by Judge Cataldo of the Criminal Court of New York City. See Duffy Decl., Ex. D; Amended Complaint I 4S. Plaintiff has therefore failed to allege that defendants were not entitled to arrest him; rather he c-laims the arrest was unlawful because the warrant itself was obtained through defendants, deliberate misrepresentations. While plaintiff may have a viable claim for malicious prosecution after the final resolution of his criminal prosecution, the claims for unlawful imprisonment or false arrest must be dismissed. See Broughton v. State of New York, 373 N.Y.S.2d 87, 94 (1975) ("[w]hen an unlawful arrest has been effected by a warrant an appropriate form of action is malicious prosecution.").

E. Plaintiff's § 1983 Claims

I did not individually address each of plain Is myriad § 1983 claims in the May 22 opinion and Order because it was not necessary to do so. For reasons I already discussed in that Opinion and Order, plaintiff's § 1983 claims are collaterally estopped to the extent that they are based on defendants, alleged violation of his constitutional rights in furtherance of the search of plaintiff's Connecticut home. See Jones, 1997 WL 277375, at *6. To the extent that plaintiff's, 1983 claims are based on plaintiff's state law

claims, they must be dismissed as the underlying state law claims were dismissed pursuant to Rule 12(b)(6). See generally Wilson v. Garcia, 471 U.S. 261, 277 (1985) (state law is source of elements of 1983 claim) (citing, inter alia, Monroe v. Pape, 365 U.S. 167, 187 (1961)).

IV. Conclusion

For the foregoing reasons, plaintiff's motion pursuant to Rules 59(e) and 60(b) is partially granted, and the May 22, 1997 Opinion and Order is amended to the extent stated above. Despite these amendments, plaintiff has brought no new evidence, mistakes, controlling matters or decisions overlooked by the court that require a different result than that reached by the May 22 Opinion and Order with regard to defendants' motions to dismiss pursuant to Rule 12(b)(6). Plaintiff's claims are therefore dismissed in their entirety with prejudice.

So Ordered:

S/_____
SHIRA A. SCHEINDLIN
U.S.D.J.

Dated: New York, New York July 11, 1997

FOOTNOTES:

1. To be precise, plaintiff's legal memoranda only state that he moves under "Rule 60". Because plaintif f is *pro se,* it is appropriate to construe his moving papers liberally and in his favor. I therefore assume that plaintiff moves under Rule 60(b) as Rule 60 (a) only applies to clerical mistakes in judgment and orders.

2. Local Rule 6.3 (Motions for Reconsideration or Reargument) was formerly Local Rule 3 (j) . As only minor revisions to the former Rule were made, the same legal standards apply to the new Rule 6.3 as were previously applied under the former Rule 3(j).

3. Rule 60(b) states: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud.....(6) any other reason justifying relief from the operation of judgment."

4. This finding, however, was accurate with regard to plaintiff' s assault and battery claims. Although plaintiff did indicate that he had suffered physical injuries, he did not in any way indicate that he believed those

injuries to be a result of defendants, intentionally tortious conduct. Defendants therefore had no notice of plaintiff's assault and battery claims.

5. As I stated in the May 22 Opinion and Order, plaintiff's Amended Complaint is needlessly lengthy and complex, and includes "myriad and repetitious factual allegations that are unrelated to plaintiff's claims." See Jones, 1997 WL 277375, at *8 .Plaintiff's claims for intentional infliction of emotional distress burden the court with the necessity of selecting relevant material from a "mass of verbiage", see Salahuddin v. Cuomo, 861 F.2d 40,42 (2nd Cir. 1988), and thus violate the requirements of Rule 8 of the Federal Rules of Civil Procedure. See Jones, 1997 WL 277375, at *8-9.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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CHARLES JONES,

Plaintiff,

-against-

Civil No.
3:95CV01269
(PCD)

DONALD J. TRUMP, ET AL.,

Defendants.

----------X

RULING ON PENDING MOTIONS

Plaintiff Charles ('Chuck') Jones was formerly a press agent for Marla Maples Trump. Plaintiff' s employment was terminated after he purportedly stole personal effects from Mrs. Tnunp. He was arrested and convicted in New York for burglary and other crimes.

This action is based on a host of incidents and allegations, such as: searches of plaintiffs malice behind the New York prosecution, and breach of a contract that purportedly could have garnered plaintiff 10% of Donald Trump's net worth. The complaint depicts a vast conspiracy, allegedly orchestrated by the following defendants:

· the Trunps and Trunp employees and associates, including Janie Elder Porco, Richard Fields, Ann Ogletree, Dominic Pezzo, Matthew Calamari, Jay Goldberg, Michael Berger, The Trump Organization and The Plaza Hotel a/k/a Plaza Operating Partners, Ltd. ('the Trump defendants');

· three police officers involved in the searches of plaintiff's residence and office (Robert Gianetta, William Lynch, and Brian Higgins) and the City of New York ("the municipal defendants"); and

. Doreen Klein, a Manhattan Assistant District Attorney who obtained warrants for the searches and otherwise participated in plaintiff's criminal prosecution.

Defendants are all New York residents, except Ogletree, who is believed to be a resident of Florida.

I. *DISCUSSION*

A. Personal Jurisdiction

Klein and the Trump defendants move to dismiss for lack of personal jurisdiction. *See* FED.R.CIV. P. 12(b)(2). "Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Capital Intl, Ltd v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). The procedural requirement

applicable here is Federal Rule of Civil Procedure 4(e)(1), which allows service "pursuant to the law of the state in which the district court is located..... Connecticut authorizes service on nonresident individuals in instances enumerated in General Statutes § 52-59b(a), *see CONN. GEN.* STAT. § 52-59b(c), as follows:

As to a cause of action arising from any of the acts enumerated in this section... [service may be made on] any nonresident individual ... who in person or through an the state, except as to cause of action for d on of character arising from the act; or (3) commits a tortious act outside the state causing injury to person or property within the state, except as to cause of action for defamation of character arising from the act ... ; or (4) owns, uses or possesses any real property situated within the state.

1. *The Trump Defendants*

The Trump defendants argue that personal jurisdiction does not exist for the defamation against them. *(See Compl.*f 140-87, 222-33, 256-60.) "[T]here must be an independent basis for each [of plaintiff's] ." *Debreni v. Bru-Jell Leasing Corp.*, 710F. Supp. 15, 19 (D. Mass. 1989) (applying analogous Massachusetts law); *see also Farr v. Spatial Technolgy Inc.*, 152 F.R.D. 113, 116 (S.D. Ohio 1993) (same) (applying analogous Ohio law).

The, above-quoted provisions of § 52-59b(a) do not authorize personal jurisdiction over the defamation claims. Subsections (a)(2) and (a)(3) explicitly exclude jurisdiction based on defamation. Subsections (a)(1) and (a)(4) are likewise not bases for jurisdiction. Jurisdiction under these subsections is allowed only for "a cause of action arising from any of the acts enumerated [there]in...." CONN. GEN. STAT. § 52-59b(a). None of the defamation claims arises from a Trump defendant's ownership, use, or possession of real property in Connecticut, as enumerated in subsection (a)(4). Nor does any claim arise from a defendant's transaction of business within the state, as enumerated in subsection (a)(1). Plaintiff alleges that defendants made defamatory statements to out-of-state news media, such as the New York *Post,* which were disseminated in Connecticut. *(See, eg.,* Compl. 177, 179, 223). Such acts, however, have typically been found not to constitute business transactions encompassed by § 52-59b(a). *See Greene v. Sha-Na-Na, 637* F. Supp. 591, 593-94 (D. Conn- 1986); *see also LombardBros. v. Gen. AssetManagement Co., 190* Conn. 245,255-57,460 A-2d 481,486-87 (1983); *but see Miller v. Meadow Car Imports, Inc.*, 822 F. Supp. 61, 65 (D. Conn. 1993). Accordingly, plaintiffs defamation claims against the Tnunp defendants are dismissed for lack of personal jurisdiction.

2. *Klein*

Klein moves to dismiss the "vast majority" of the eleven claims her for lack of personal jurisdiction. She does not fully specify which counts

are subjects of her motion and which are not. It is clear from the memorandum supporting her motion that she targets the two defamation counts,(Compl.270-73), which are dismissed for substantially the same reasons as pertain to the Trunp defendants.Klein does not seem to seek dismissal of the fraud claim *(id.* 87-92), which concerns an act (her effort to obtain a search warrant from a Connecticut judge) for which she concedes her amenability to service. It is impossible to determine, however, whether she seeks dismissal of the other eight counts in part, in whole, or not at all.

This situation is analogous to *Metropolitan Life Insurance Company v. Everett, 15* F.R-D. 498 (S.D.N.Y. 1954), in which a motion to strike was denied because defendant did not identify which paragraphs of plaintiffs answer it desired stricken. Id. at 499. A motion must "set forth the relief or order sought." **FED.** R- Civ. P. 7(b)(1). Because Klein's motion does not do so, it is denied without prejudice, except as to the defamation counts.

B. Venue

1. *Venue in the District of Connecticut*

Klein and the municipal defendants move to dismiss for improper venue. *See* FED. R- Civ. P. 12(b)(3). Venue must be proper for each claim. *See Neizl v. Williams,* 543 F. Supp. 899, 904 (M.D. Fla. 1982). A district is a proper venue for a claim if "a substantial part of the events or omissions giving rise to the claim occurred" there. 28 U.S.C. § 1391(b) (1994). "[C]ourts have avoided applying [this language) so broadly as to locate venue in any of the many districts where some part, however small, of an alleged wrong has taken place." *Whelen Eng'g Co. v. Tomor Elecs., Inc.,* 672 F. Supp. 659, 665 (D. Conn. 1987).

This district is an improper venue for the following claims against Klein and/or the municipal defendants because they did not substantially arise from events or omissions occurring in Connecticut:

Malicious Abuse of Process and Retaliatory Prosecution (Compl. 102-23) *and Extortion (id.* 124-29). In these claims, plaintiff alleges that threats made in New York culminated in his New York prosecution. *(See, eg., id.* 123.) Although plaintiff notes that these actions were purportedly taken to induce him to abandon a contract allegedly entered into in Connecticut, *(see id.* 103), this is a minor aspect of his claims.

Trespass (Compl. 241-42), *Destruction of Private Property (id.* 243-46), Theft *(id.* 247-48), *Violation of Privacy (id. 249-51), Conversion (id.* 252-55).These claims exclusively concern actions by defendants at plaintiff's New York office.

Malicious Abuse of Process (Compl.290-99). This claim exclusively concerns KJein's alleged subornation of perjury in New York to obtain a search warrant for plaintiff's New York office. *(See id.* 291.)

The District of Connecticut is also an improper venue for the remaining claims against Klein and/or the municipal defendants. As the discussion in the footnote suggests, "it is not clear that [three claims] arose in only one specific district..." Leroy *v. Great W. United Corp.*, 443 U S. 173, 185 (1979). They seem to have arisen substantially both from events or omissions occurring in this state and from others in the Southern District of New York. Plaintiff could have chosen between these two districts if they were approximately equal "in terms of availability of witnesses, the accessibility of other relevant evidence, and the convenience of the defendant[s] (but *not* of the plaintiff).–." Id. Approximately equal however, the districts were not:

· The municipal defendants state that most witnesses are located in New York, and plaintiff does not contradict this contention. He simply identifies several Connecticut witnesses he plans to call, without stating that they would resist testifying in New York.

· Much of the other relevant evidence is accessible in the Southern District As the discussion in the footnote suggests, a great bulk of the operative facts took place there.

. The Southern District is obviously more convenient for defendants. All but perhaps one of them are located there.

Because venue in the District of Connecticut is improper, the claims discussed above must either be (1) dismissed or (2) severed and transferred to a proper venue. *See* 28 U. S.C. § 1406(a); 2A JAMES WM.MOORE, MOORE'S FEDERAL PRACTICE 12.07[2.-3], at 12-78 (2d ed. 1995); *see also Sharp Elecs. Corp. v. Hayman Cash Register Co.*, 655 F.2d 1228, 1230 (D.C. Cir. 1981). An alternative to either course of action, discussed below, is transfer of the entire case: not only the claims against Klein and/or the municipal defendants, but those against the Trump defendants as well.

2. Transfer to the Southern District

Many of the claims discussed above are made against the Trump defendants as well as Klein and/or the municipal defendants. *(See* Compl. 87-92 (fraud), 93-101 (unlawful search and seizure), 102-23 (malicious abuse of process and retaliatory prosecution), 124-29 (extortion), 130-34 (conspiracy, 24142 (trespass), 243-46 (destruction of private property), 24748 (theft), 249-51 (violation of privacy), 252-55 (conversion), 310-13 (denial of fair trial).) Although the District of Connecticut is an improper venue insofar as the claims relate to Klein and the municipal defendants, the district is not an improper venue insofar as they relate to the Trump defendants. Venue is also proper in this district with respect to plaintiff' s other remaining claims against the Trump defendants. *(See id.* 188-21 (breach of contract), 234-40 (intentional infliction of emotional distress).) The Trump defendants have waived any venue objection by omitting it from

their motion to dismiss, and venue may not thereafter be held improper sua sponte. *See* FED. R- Civ. P. 12(h)(1); *see also Concession Consultants, Inc. v. Mirisch,* 355 F.2d 369, 371 (2d Cir. 1966).

Nevertheless, the claims against the Trunp defendants, as well as those against Klein and/or the municipal defendants, may be transferred to the Southern District. Under 28 U.S. C. § 1404(a), improper venue is not a prerequisite to transfer. *See* 1A Moore, *supra,* 0.345[l], at 4321.Transfer is allowed to a district where the action "Might have been brought." 28 U.S.C. §1404(a). The Southern District is such a district. "A civil action...may ... be brought ... in ... a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought." *See* 28 U.S.C. 1391(b). As stated above, all but perhaps one of the defendants may be found in the Southern District and there is no other district in which plaintiff could have brought this action, given that the District of Connecticut is an improper venue for the claims discussed above.*See id.(specifying* permissible venues).

Transfer must be "[f]or the convenience of parties and witnesses, in the interest of justice....." 28 US.C. § 1404(a). The factors to be considered are: (1) plaintiff's choice of forum, (2) where the operative facts occurred, (3) the convenience of the parties, (4) the convenience of the material witnesses, (5) the availability of process to compel the appearance of unwilling witnesses, and (6) other considerations affecting the interests of justice. *Van Ommeren Bulk Shipping, B. V v. Tagship, Inc.',* 821 F. Supp. 848, 850 (D. Conn. 1993). No combination or weight of such factors is required for transfer.1A Moore, *supra,* 0.345[5], at 4362-63. The decision is within the court's discretion. *See Hubbard v. Whitee,* 755 F.2d 692, 694 (8th Cir. 1985), *cert. denied,* 474 U.S. 834 (1985).

Transfer of this case to the Southern District is in the interest of justice. Plaintiff's choice of a Connecticut forum is outweighed by the following factors: First, transfer is appropriate because most defendants, 'witnesses', and other evidence are located in the Southern District, as discussed above in connection with the claims that appear to have.arisen substantially in both Connecticut and New York.

Second, plaintiff would not be inconvenienced by transfer to the Southern District. He offers no explanation for his claim that transfer would financially prejudice him. Nor is an explanation otherwise apparent. As plaintiff is pr pro se, he would not have to incur the cost of retaining New York counsel. Nor would he likely incur greater travel costs after transfer. His Greenwich residence is actually closer to Manhattan and White Plains, where Southern District courthouses are 'located, than it is to the courthouse in New Haven.

Perhaps the most important factor favoring transfer, however, is the following: As stated above, the alternative to transferring this case in its entirety is either (1) dismissing the claims for which venue in this district is improper, or (2) severing those claims and transferring them to a proper venue.. Either of these courses would work hardship on plaintiff. Severance would force him to endure the expense and duplication of litigating claims against different defendatns in different venues. Dismissal could do the same: it would be without prejudice, *In re Hall, Bayoutree Assocs., Ltd,* 939 F.2d 802, 804 (9th Cir. 1991), allowing plaintiff to refile his claims in another district and assume the burden of a second action. *Costello v UmtedStates,* 365 U.S. 265, 285-86 (1961). If plaintifff chose not to refile his claims he would have to forego a decision on their merits. *See Hall,* 939 F.2d at 804. Despite plaintiffs objections to the Southern District, it seems certain that he would prefer transfer of the entire case there to either the burden of maintaining two actions or the disappointment of foregoing a decision on the merits of his claims for which venue in this district is improper.

II CONCLUSION

The motions to dismiss (docs. 31-1, 58-1, 71-1) are granted in part and denied in part: The defamation claims(Compl.140-87, 222-33, 256-60, 270-73), are dismissed for lack of personal jurisdiction. All other claims are transferred to the Southern District of New York. In other respects, defendants' motions are denied without prejudice to renew.

SO ORDERED.

Dated at New Haven, Connecticut, March 26, 1996.

S/_____
Peter C. Dorsey
Chief United States District Judge

FOOTNOTES:

1. It will not always be accurate to refer to the Trump and municipal defendants collectively. Several issues do not pertain to all of a group's members. Nevertheless, a claim will be described as made against or a motion by, the Trump or municipal defendants as long as at least one of the group's members is named in the claim or motion.

2. *Fraud* (Compl. 87-92), *Unlawful search and seizure (id.* 93-101), *Trespass(id. 261-66), Intentional Infliction of Emotional Distress (id.* 267-69). These claims concern the search of plaintiffs Connecticut residence, but they all depend on perjury that allegedly occurred in New York. *(See id.* 69.);*Conspiracy (Compl.* 130-34). Although the complaint

states the alleged conspiracy " occurred in Connecticut, (id. 23), plaintiff cannot lay venue in this district based on so conclusory an assertion. *See, e.g., Gibion v. Colo.*, No. 944059SAC, 1994 WL 262687, at 1 (D. Kan. May 24, 1994). The facts he alleges in connection with the conspiracy occurred in both Comecticut and New York. *(See, e.g., id.*49,69); *Unconstitutional Policy or Custom (Compl* 13 5 -3 9) *and Intentional Infliction of emotional Distress/Harassment* (Compl. 274-89). These claims concern the searches of plains Connecticut residence and his New York office. *(See id.* 136, 276.) The intentional infliction/harassment claim also concerns proceedings in plaintiff's New York prosecution. *(See id.* 278-85.); *Harassment (id.* 300-09). This claim concerns Klein's alleged misuse of her authority as an Assistant District Attorney, which purportedly involved acts in both Connecticut and New York. *(See, e.g., id.* 69.);*Denial of Fair Trial* (Compl. 310-13). This claim concerns plaintiff's New York criminal trial and relies on previous allegations, *(see id.* 311), some of which, as discussed above, arose substantially in Connecticut as well as New York.

3.Nor is a motion for transfer requirecl *Clopay Corp. v. Well Cos.*, 527 F. Supp. 733, 737 (D. Del. 198 1). At the present time, there is no such motion pending. Klein has moved for transfer only in the event that this district is held to be a proper venue for the claims against her, which it has not been The municipal defendants' motion for transfer was denied without prejudice on September 7, 1995 and has not subsequently been renewed. Plaintiff and the Trump defendants have not moved for transfer, but they have had the opportunity to bnef the issue, after it was raised by Klein and the municipal defendants. *See Robinson v. Town of Madison,* 752 F. Supp. 842, 846 (N.D. El. 1990). Only plaintiff has objected to transfer.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

CAROLYN CLARK CAMPBELL
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 12th day of January one thousand nine hundred and ninety-nine.

Charles Jones,

Plaintiff-Appellant,

v

Dkt No: 97-9017

Donald Trump, etal,

Defendants-Appellees.

A petition for rehearing en banc having been filed herein by the appellant Charles Jones.

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT
CAROLYN CLARK CAMPBELL, Clerk
BY:
S/_____
Beth J. Meador,
Administrative Attorney

APPENDIX E

CONSTITUTIONAL PROVISIONS AND STATUTES

1. *FIRST AMEND MENT TO THE U.S.CONSTITUTION:* Congress shall make no law respecting an establishment of religion,or prohibiting the free exercise thereof or abridging freedom of speech, or of the press.

2. *FIFTH AMENDMENT TO THE US CONSTITUTION:* No person shall be……; nor be deprived of life, liberty or property without due process of law;..."

3. *CIVIL RIGHTS ACT, 42 U.S.C., SEC. 1983:* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

4. *HOBBS ACT, 18 U.S.C.. 1951:* (a) whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any persons or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined or imprisoned not more than 20 years, or both.

5 .*TRAVEL ACT, 18 U.S.C. 1952:* whoever travels in interstate commerce or uses the mad or any facility in interstate commerce or foreign commerce, with intent to ... (2) commit any crime of violence to further any unlawful activity, or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.....

5. *R,ACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT: 18 U. S C 1962(b) (c) (d):* (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. (d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a),(b), or (c) of this section.

Supreme Court, U.S.
FILED
MAY 3 1999
OFFICE OF THE CLERK

No. 98-1581

IN THE

Supreme Court of the United States

CHARLES JONES,

Petitioner,

v.

DONALD J. TRUMP, MARLA MAPLES TRUMP, THE PLAZA HOTEL, also known as PLAZA OPERATING PARTNERS, LTD., ROBERT MORGANTHAU, individually and as District Attorney, County of New York, DOREEN KLEIN, individually and as an Assistant District Attorney for the County of New York, THE TRUMP ORGANIZATION, JEANINE PIRRO, District Attorney, individually and as District Attorney, County of Westchester, ALBERT PIRRO, MATTHEW CALAMARI, DOMENIC PEZZO, JANIE ELDER, JOHN BANER, Individually and as a New York City Police Officer, ROBERT GIANETTA, Individually and as a New York City Police Officer, DEL LARROCA, FREDERICK H. COHN, EXECUTIVE PLAZA CONDOMINIUM, CDL HOTELS, MICHAEL BERGER, RICHARD FIELDS, CITY OF NEW YORK, ANN OGLETREE, BRIAN HIGGINS, Individually and as a New York City Police Officer, and WILLIAM LYNCH, Individually and as a New York City Police Officer,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION FOR RESPONDENT JEANINE PIRRO

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QUESTION PRESENTED

Does the Order of the United States Court of Appeals for the Second Circuit which affirmed Orders of the United States District Court for the Southern District of New York, which dismissed petitioner Charles Jones' complaints in their entirety and denied leave to amend, raise any issue warranting review by this Honorable Court?

No. The Courts below properly stated the rules of law with regard to: dismissal upon the grounds of Rule 8 of the Federal Rules of Civil Procedure; dismissal upon the grounds of Rule 12(b)(6) of the Federal Rules of Civil Procedure; and denial of leave to amend to a *pro se* litigant. The Courts below also properly applied the foregoing rules of law and made no erroneous factual findings.

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STATEMENT OF THE CASE

By the instant petition Charles Jones seeks a writ of certiorari from this Honorable Court authorizing review of a Summary Order of the United States Court of Appeals for the Second Circuit, entered on September 21, 1998 (A17-19).[1] That Order of the Court of Appeals affirmed Orders of the United States District Court for the Southern District of New York entered on May 22, 1997 (A20-32) and July 11, 1997 (A33-40) dismissing two complaints filed by the petitioner Charles Jones pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6), and denying leave to amend those complaints.

The complaints in the District Court were assigned Docket Numbers 96 Civ. 2995 and 96 Civ. 6927[2]. The allegations set forth in 96 Civ. 2995, for the most part, center upon the arrest of petitioner and searches of his

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[1] Numbers preceded by the letter "A" refer to the respective pages of the Appendix annexed to Charles Jones' Petition for a Writ of Certiorari.

[2] Both of these complaints were in fact "amended" complaints. Docket Number 96 Civ. 2995 was originally filed in United States District Court for the District of Connecticut and was thereafter transferred to United States District Court for the Southern District of New York (A41-47). Upon transfer to the Southern District of New York, the Hon. Shira A. Scheindlin (U.S.D.J.) permitted the petitioner to file and serve an amended complaint as of right. Docket Number 96 Civ. 6927, as originally filed and served, was hand-written and illegible. Petitioner was once again permitted to file and serve an amended complaint.

property in July of 1992, arising out of allegations that he had burglarized the apartment of the respondent Marla Maples Trump located in New York County. Subsequent to the foregoing, petitioner was indicted and convicted in state court and sentenced to a term of incarceration of one and one-half years to four and one-half years.[3] There was no allegation contained in 96 Civ. 2995 that respondent Jeanine Pirro participated, or directed in any manner, the arrest and searches of July of 1992.

The allegations set forth in the complaint filed as 96 Civ. 6927, for the most part, centered upon the arrest of the petitioner in October of 1995 arising, among other things, out of his purported facsimile transmission, to various locations within New York County, of unsolicited messages which included sexually explicit photographs. There were no factual allegations naming the respondent Jeanine Pirro contained within the complaint filed as 96 Civ. 6927, regarding the events of October 5, 1995.

---

[3] Petitioner's appeals of this conviction in the courts of New York State proved unavailing, but by Order of the United States District Court for the Southern District of New York (SCHEINDLIN, J.), dated September 19, 1996, plaintiff's *habeas corpus* petition for a new trial was granted. That Order was subsequently affirmed by Order of the United States Court of Appeals for the Second Circuit. See *Jones v. Vacco*, 1996 U.S. Dist. LEXIS 13851 (S.D.N.Y. Sept. 19, 1996) aff'd 126 F.3d 408 (2d Cir. 1997).

However, in January of 1996, the respondent Jeanine Pirro, the District Attorney of Westchester County, received reports that two unsolicited facsimile messages containing prurient, sexually explicit written material, and a photograph of a similar nature had been received by the Mayor of the City of New Rochelle and the General Manager of the Wing Foot Country Club. These facsimile messages were transmitted many months after the transmissions which were the basis of the charges for which the petitioner was arrested in October of 1995 and were received in Westchester County as opposed to New York County. The facsimile messages received in Westchester County in January of 1996 bore the name and business address of the petitioner and one of the two messages made reference to the respondent Donald Trump's negotiations with the City of New Rochelle concerning the development of David's Island, a negotiation in which respondent Donald Trump was represented by the respondent Albert Pirro. In light of the reference to the David's Island negotiation, and because the respondent Albert Pirro is her spouse, respondent Jeanine Pirro, as the District Attorney of Westchester County, disqualified herself and her staff from the investigation of this matter and requested the appointment of a Special District Attorney pursuant to New York State County Law

Section 701(1)(b). By Order dated March 19, 1996, and filed in Supreme Court, Westchester County, the Hon. James M. Catterson, Jr., the District Attorney of Suffolk County, was appointed as Special District Attorney to investigate the transmission of the facsimile messages that were received in Westchester County in January of 1996.

Petitioner acknowledged in his complaints that although he was interviewed during the course of the ensuing investigation undertaken by the Special District Attorney, he was neither arrested nor prosecuted as a result. Nonetheless, by his complaints petitioner alleged the commission of Racketeering Influenced and Corrupt Organizations Act violations by the respondent Jeanine Pirro and further asserted claims against her for false arrest and unlawful imprisonment; the use of excessive force; malicious use of process and retaliatory prosecution; malicious abuse of process; verbal abuse and harassment; illegal search, seizure and violation of the right to privacy; conspiracy; violation of his first amendment right to free speech; and harassment and the intentional infliction of emotional distress.

By motion dated February 28, 1997, respondent Jeanine Pirro moved, *inter alia*, to dismiss both complaints pursuant to Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure. All of the respondents filed similar

motions. By Opinion and Order dated May 22, 1997, the United States District Court for the Southern District of New York granted all of the respondents' motions to dismiss pursuant to Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure, and denied petitioner leave to amend his complaints[4] (A20-32). That Order was subsequently modified by Order dated July 11, 1997 in a manner which did not disturb the District Court's earlier determination to grant the motions of all respondents seeking dismissal pursuant to Rule 12(b)(6) and Rule 8, and to deny petitioner leave to amend (*Jones v. Trump*, 971 F.Supp. 783, 789 (S.D.N.Y. 1997) reproduced at A33-40). These Orders of the District Court were affirmed by Order of the Court of Appeals for the Second Circuit, dated September 21, 1998, which noted in pertinent part that:

> For substantially the same reasons expressed in the district court's Opinions and Orders dated May 22, 1997 and July 11, 1997, we affirm the district court's dismissal of Jones's claims. In particular, we find that the district court was correct in holding that Jones's two amended complaints manifestly violated Rule 8 in light of their "needless length and complexity" and inclusion of

[4] It would appear that the District Court addressed only those grounds for dismissal which were common to all defendants inasmuch the additional grounds for dismissal asserted by respondent Jeanine Pirro pursuant to Rule 12 (b)(2) and Rule 12(b)(5) were not considered.

> allegations that are "scandalous, impertinent, immaterial and provocative." .... The district court did not abuse its discretion in refusing to grant Jones leave to amend in light of the resultant prejudice to the defendants and Jones's inability to cure the many legal defects in the complaints.

Jones v. Trump, 1998 U.S. App. LEXIS 23531 at 2 (2d Cir. N.Y. Sept. 21, 1998)(citations omitted) reproduced at A18-19.

By Order dated January 12, 1999, the Court of Appeals for the Second Circuit denied rehearing (A48).

On March 30, 1999, a copy of Charles Jones' Petition for a Writ of Certiorari was delivered by U.S. Mail to the Westchester County Department of Law in an envelope post-marked March 27, 1999.

Charles Jones petition was docketed by the Clerk of the United States Supreme Court on April 1, 1999.

REASONS FOR DENYING THE PETITION

Petitioner Has Failed to Raise an Issue Which Warrants Review by This Honorable Court.

Pursuant to Rule 10 of this Court, review on a writ of certiorari is not a matter of right, but of judicial discretion. The principal purpose for which the United States Supreme Court uses certiorari jurisdiction is to

resolve conflicts among the Circuit Courts of Appeal and state courts concerning the meaning of provisions of federal law. See *Braxton v. U.S.*, 500 U.S. 344, 111 S. Ct. 1854, 114 L.Ed.2d 385 (1991). "A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." United States Supreme Court Rule 10.

The Court of Appeals for the Second Circuit and the District Court for the Southern District of New York in the matter at bar both properly stated the rule of law that complaints that are needlessly lengthy and complex, and that contain scandalous, impertinent and immaterial allegations, violate Rule 8 of the Federal Rules of Civil Procedure and that such complaints may properly be dismissed without leave to amend if prejudice would result to a defendant or the defects in the complaint could not be cured (*Jones v. Trump*, 1998 U.S. App. LEXIS 23531 at 2 (2d Cir. N.Y. Sept. 21, 1998) reproduced at A18-19; *Jones v. Trump*, 1997 U.S. Dist Lexis 7324 at 11 (S.D.N.Y. May 22, 1997) reproduced at A30 citing *Salahudin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988) and *Oliver Schools, Inc. v. Foley*, 930 F.2d 248, 253 (2d Cir. 1991). Both the Courts below recognized that *pro se* litigants are not routinely

denied leave to amend[5] complaints to conform with Rule 8 but found that the entry of such an Order herein was appropriate inasmuch as there was no means by which the petitioner could amend his complaints to state a valid cause of action against any of the respondents. In so holding, the Courts below "properly stated [the] rule of law." Moreover, the petitioner herein should be estopped from arguing that this is one of those "rare" instances in which certiorari review should be granted to review "erroneous factual findings or the misapplication of a properly stated rule of law" because he did not include in the appendix to his petition the subject complaints. This failure to supply the pleadings has deprived this Honorable Court of the ability to weigh the merits of the lower courts' findings that the complaints herein manifestly violated Rule 8 and were not susceptible of amendment to state a valid claim. "The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition." United States Supreme Court Rule 14(4).

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[5] Notably both of the complaints herein had already been subjected to amendment, albeit prior to the entry of the Orders of dismissal. Statement of the Case at 1 n.2.

However, and notwithstanding the fact that the principal purpose of certiorari review is to resolve conflicts among the Circuit Courts of Appeal and state courts concerning the meaning of provisions of federal law, it is clear from a review of petitioner's complaints[6] that the courts below neither erred upon the facts or misapplied the law in finding that dismissal upon the grounds of Rule 8 and Rule 12(b)(6) of the Federal Rules of Civil Procedure was appropriate and that neither complaint was susceptible of amendment to state a valid cause of action.

RULE 12(b)(6)

96 CIV. 2995

In this complaint, the petitioner stated only one claim against respondent Jeanine Pirro, which is raised in his first cause of action and alleged, in conclusory fashion, violations of the Racketeering Influenced and Corrupt Organizations Act (18 U.S.C. §1962(b),(c),(d)) (96 Civ. 2995 at para. 150-61). The only specific factual averments made in support of this cause of action alleged that respondent Jeanine Pirro, as a participant in an "enterprise," improperly used the Office of District Attorney of Westchester County to request the appointment of a Special

[6] One copy of each of these complaints have been lodged with the Clerk of this Honorable Court by the Respondent herein and

District Attorney to investigate the transmission of two facsimile messages, purportedly sent by the petitioner, containing prurient, sexually explicit written material as well as photographs of a similar nature (96 Civ. 2995 at 140-45).

Notwithstanding the utter lack of merit of petitioner's underlying allegations of bad faith in the request for the appointment of a Special District Attorney, petitioner's first cause of action also failed to state a claim pursuant to the Racketeering Influenced and Corrupt Organizations Act ("RICO") upon its face. The United States Court of Appeals for the Second Circuit has set forth the following as the criteria that must be satisfied to establish any violation of 18 U.S.C. §1962:

> (1) that the defendant (2) through the commission of two or more acts (3) constituting a "pattern" (4) of "racketeering activity" (5) directly or indirectly invests in, or participates in (6) an "enterprise" (7) the activities of which affect interstate commerce or foreign commerce.

DeFalco v. Dirie, 923 F.Supp. 473, 476 (S.D.N.Y. 1996) citing *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5, 17 (2d Cir. 1983) cert. denied sub. nom. *Moss v. Newman*, 465 U.S. 1025, 104 S. Ct. 1280, 79 L.Ed.2d 684 (1984).

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are available for review.

Moreover, in order to have standing a civil RICO plaintiff must show: "(1) a violation of 1962; (2) injury to business or property; and (3) causation of the injury by the violation." Id. quoting *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 23 (2d Cir. 1990).

Judged against the foregoing criteria, the inadequacies of petitioner's RICO claim as against respondent Jeanine Pirro were clear. Although petitioner herein alleged the commission of extortion, mail fraud, wire fraud,[7] obstruction of justice and tampering with witnesses, as the acts of the respondents upon which his RICO claim is predicated, he failed to indicate which respondents committed, or aided or abetted in the commission of which predicate acts. Therefore, his complaint fails to state a claim. *Morin v. Trupin*, 747 F.Supp. 1051, 1064-65 (S.D.N.Y. 1990). Indeed, insofar as respondent Jeanine Pirro is concerned, a review of the 149 paragraphs preceding petitioner's RICO cause of action, fails to reveal any factual allegations that respondent Jeanine Pirro committed any predicate act, much less two predicate acts, the sole averment being that respondent Jeanine Pirro abused the Office of District Attorney in requesting the appointment of a Special District Attorney.

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[7] Plaintiff's allegations that respondent Jeanine Pirro committed wire fraud were not pled with the particularity required by Rule 9(b) of the Federal Rules of Civil Procedure.

See *Mathon v. Marine Midland Bank, N.A.*, 875 F.Supp. 986, 995 (E.D.N.Y. 1995)(predicate acts must be crimes under state or federal law). Petitioner's utter failure to plead respondent Jeanine Pirro's commission of any predicate act, standing alone, justified the determination of the District Court to dismiss this cause of action, founded upon purported violations of 18 U.S.C. §1962(b),(c),(d).

Similarly, petitioner's summary allegation that all of the acts of the various respondents were the result of "common, continuing schemes against plaintiff originating on or about 1991" (96 Civ. 2995 at para. 20) also fails to satisfy general RICO pleading requirements. Therefore, the determination of the District Court to dismiss was correct since it is well settled that in order to avoid dismissal for failure to state a claim, a RICO plaintiff must plead specific facts, not mere conclusory allegations, which establish the existence of an "enterprise." *Comwest, Inc. v. American Operator Services, Inc.*, 765 F.Supp. 1467, 1475 (C.D. Cal. 1991) quoting *Elliott v. Foufas*, 867 F.2d 877, 881 (5th Cir. 1989). Petitioner further failed to plead the necessary pattern of activity and causation required to sustain a RICO claim. In order to prove a pattern, a plaintiff must "show that the racketeering predicates are

related, *and* that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989)(emphasis in original). Petitioner's complaint was devoid of such allegations. Also, in order to sustain a civil RICO claim, a plaintiff must allege injury to his business or property caused by a defendant's predicate acts. *Burdick v. American Express Co.*, 865 F.2d 527, 529 (2d Cir. 1989) *citing* 18 U.S.C. §1964(c). As petitioner's complaint is devoid of any such allegations of injury to his business or property against respondent Jeanine Pirro, it fails to state a claim as against her.

Notwithstanding these general pleading deficiencies which apply to any RICO action, petitioner's allegations against respondent Jeanine Pirro also failed to state claims pursuant to individual subdivisions "b", "c" or "d" of Section 1962. Petitioner's conclusory allegations failed to establish even the existence of an enterprise and therefore any allegation that respondent Jeanine Pirro had acquired an interest or exercised control over any such enterprise failed to state a claim pursuant Section 1962(b). Insofar as subdivision "c" of Section 1962 was concerned, the focus of that subdivision is upon the "individual patterns of racketeering engaged in by a defendant, rather than the

collective activities of the members of the enterprise." *United States v. Persici*, 832 F.2d 705, 714 (2d Cir. 1987) cert. denied sub nom *Russo v. United States*, 486 U.S. 1022, 108 S. Ct. 1995, 100 L.Ed.2d 227 (1988). Accordingly, in failing to plead with specificity which respondents committed which predicate acts, petitioner's §1962(c) allegation fails to state a claim. Finally, to the extent that a conspiracy pursuant to 18 U.S.C. §1962(d) was claimed to exist, the complaint was deficient in failing to allege that respondent Jeanine Pirro "by word[ ] or action[ ], manifested an agreement to commit two or more predicate acts in furtherance of the common purpose of the RICO enterprise." *Com-Tech Associates v. Computer Associates International, Inc.*, 753 F.Supp. 1078 1092 (E.D.N.Y. 1990) quoting *First City National Bank and Trust Company v. Federal Deposit Insurance Corporation*, 730 F.Supp. 501, 509 (E.D.N.Y. 1990). In order to sustain a claim under this subdivision, a plaintiff is required to allege that defendants committed two or more predicate acts or personally agreed to commit two or more predicate acts. See *United States v. Rastelli*, 870 F.2d 822, 832 (2d Cir. 1989). Conclusory allegations of participation in a §1962(d) conspiracy "will not avail on a motion to dismiss, and the plaintiff must plead allegations that each defendant knowingly agreed to participate in the conspiracy ... ."

Com-Tech Associates at 1092 citing *Grunwald v. Bornfreund*, 668 F.Supp. 128, 133 (E.D.N.Y. 1987).

For the foregoing reasons, petitioner's RICO claims, insofar as they relate to the respondent Jeanine Pirro were properly dismissed in their entirety for failure to state claim for which relief can be granted.

96 CIV. 6927

In this complaint, petitioner asserted claims against respondent Jeanine Pirro in his first, second and sixth causes of action.

Petitioner's first cause of action in this complaint alleged various violations of his civil rights, punishable pursuant to 42 U.S.C. §1983, committed by respondent Jeanine Pirro and various other the respondents arising out of petitioner's arrest on October 5, 1995 (96 Civ. 6927 at para. 69-132). In order to state a valid claim pursuant to 42 U.S.C. §1983 a plaintiff must allege the personal involvement of a defendant in the purported constitutional deprivation. Pivotally, all of the acts underlying this cause of action were allegedly committed outside the jurisdiction of respondent Jeanine Pirro as District Attorney of Westchester County by persons not under her direction and control. The petitioner failed to allege any personal involvement of the respondent Jeanine Pirro in the

constitutional deprivations purportedly visited upon petitioner on or about October 5, 1995, and therefore this cause of action was properly dismissed by the District Court pursuant to controlling precedent. *Moffitt v. Town of Brookfield*, 950 F.2d 880, 886 (2d Cir. 1991); *McKinnon v. Patterson*, 568 F.2d 930, 934 (2d Cir. 1977) cert. denied 434 U.S. 1087, 98 S. Ct. 1282, 55 L.Ed2d 792 (1978).

Petitioner's second cause of action alleged a violation of his first amendment right to free speech by respondent Jeanine Pirro and various other respondents punishable pursuant to 42 U.S.C. §1983 (96 Civ. 6927 at para. 133-38). The conduct of respondent Jeanine Pirro pled in support of this cause of action was her request for the appointment of a Special District Attorney to investigate and possibly prosecute the transmission of two facsimile messages, purportedly sent by the petitioner, containing prurient, sexually explicit written material as well as photographs of a similar nature[8] (96 Civ. 6927 at para 52-57). It was unnecessary to reach the constitutional

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[8] Respondent Jeanine Pirro disqualified herself and her staff from the investigation of this matter and requested the appointment of a Special District Attorney pursuant to New York State County Law §701(1)(b) because one of the subject facsimile messages made reference to the respondent Donald Trump's negotiations with the City of New Rochelle concerning the development of David's Island, a negotiation in which the respondent Donald Trump was represented by the respondent Albert Pirro, the spouse of respondent Jeanine Pirro.

issue posited by petitioner because respondent Jeanine Pirro's request was based upon a reasonable interpretation of New York State Penal Law (Penal Law) §240.30, which provides in pertinent part that:

> A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:
>
> 1. Communicates, or causes a communication to be initiated by mechanical or electronic means or otherwise, with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm ... .

New York Penal Law §240.30(1).

Regardless of whether or not the content of these facsimile messages would be protected pursuant to the first amendment in another context, the narrow question herein was whether or not the transmission of these facsimile messages was undertaken with the intent to "harass, annoy, threaten or alarm" recipients who had not requested this material. The actions of state prosecutors in initiating and pursuing criminal prosecutions are entitled to absolute immunity and the "discretionary" activities of such prosecutors are subject to qualified immunity under 42 U.S.C. §1983 when "their conduct does not violate clearly

established statutory or constitutional rights of which a reasonable person would have known." *Buckley v. Fitzsimmons*, 509 U.S. 259, 268-69, 113 S. Ct. 2606, ____, 125 L.Ed.2d 209, ___(1993) quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, ___, 73 L.Ed.2d 396, ___ (1982). Accordingly, the action of respondent Jeanine Pirro in requesting the appointment of a Special District Attorney to investigate whether Penal Law §240.30(1) had been violated by the transmission of the described facsimile messages to unwitting recipients was entitled to, at least, qualified immunity. Cf. *Mozzochi v. Borden*, 959 F.2d 1174 (2d Cir. 1992) (initiation of prosecution under Connecticut statute proscribing communications made "in a manner likely to cause annoyance or alarm" did not violate a clearly established right). In any event, the petitioner offered no cogent explanation of how the exercise of his first amendment rights were violated or "chilled" by the respondent Jeanine Pirro when: (1) no prior restraint was placed upon his exercise of his right to free speech; (2) the respondent Jeanine Pirro merely requested and secured the appointment of a Special District Attorney to investigate the already accomplished transmission of two facsimile messages; (3) investigators under the direction of that Special District Attorney, not respondent Jeanine Pirro,

interviewed the plaintiff in a non-custodial setting; and (4) no criminal action was commenced.

Plaintiff, in his sixth cause of action in this complaint, invoked the pendent jurisdiction of the federal courts and alleged the commission of the state law torts of harassment and the intentional infliction of emotional distress (96 Civ. 6927 at para. 117-24). Inasmuch as there is no cognizable tort of "harassment" pursuant to New York common law, the District Court properly treated this cause of action as one solely for the intentional infliction of emotional distress (A32 at n.5) and dismissed it. The elements of the tort of the intentional infliction of emotional distress are:

> 1) conduct that goes beyond "all possible bounds of decency;" 2) the intention to cause distress, or knowledge that defendant's conduct would result in emotional distress; 3) severe emotional distress; and 4) a casual link between the defendant's conduct and plaintiff's distress.

Gay v. Carlson, 60 F.3d 83, 89 (2d Cir. 1995).

Petitioner utterly failed to meet these elements in the sole factual allegation raised against respondent Jeanine Pirro that, as District Attorney of Westchester County, she requested the appointment of a Special District Attorney to investigate the transmission of two facsimile messages

containing prurient, sexually explicit written material as well as photographs of a similar nature. *Roberts v. Pollack*, 92 A.D.2d 440, 448, 461 N.Y.S.2d 272, 277 (1st Dep't 1988)("series of acts necessary to establish a viable action [for the intentional infliction of emotional distress]"). In so acting, respondent Jeanine Pirro was seeking to diligently enforce the criminal laws of the State of New York while avoiding even the appearance of impropriety and therefore conducted herself in a manner which did not violate any clearly established right of the plaintiff. See *Buckley v. Fitzsimmons*, 509 U.S. 259, 268-69, 113 S. Ct. 2606, ____, 125 L.Ed.2d 209, ___(1993) quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, ___, 73 L.Ed.2d 396, ___ (1982).

In summary, the single cause of action asserted against respondent Jeanine Pirro in the complaint filed as 96 Civ. 2995, and the three causes of action asserted against respondent Jeanine Pirro in the complaint filed as 96 Civ. 6927, failed to state claims for which relief can be granted and were properly dismissed, as against respondent Jeanine Pirro, by the District Court pursuant to Rule 12(b)(6).

RULE 8

The District Court properly ordered that the claims asserted against the respondent Jeanine Pirro contained in the complaints filed as 96 Civ. 6927 and 96 Civ. 2995 be dismissed in their entirety pursuant to Rule 8 of the Federal Rules of Civil Procedure because those complaints were "needless[ly] length[y] and complex[ ] [and] contained allegations that [were] scandalous, impertinent, immaterial and provocative" (A29).

Pursuant to Rule 8, pleadings are to contain a "short and plain statement of the claim showing that the pleader is entitled to relief" (Rule 8(a))(2)) and "[e]ach averment of a pleading shall be simple, concise and direct" (Rule 8(e)(1)). Plaintiff's violations of these pleading rules throughout the two complaints which total "125 pages setting forth a combined total of 54 independent claims against 25 defendants" (A21) are manifest and abundant. See, e.g. 96 Civ. 2995 at para. 21(i)(d); 22(iv)-(vii); 91(ii); 140; 148 and 96 Civ. 6927 at para 7(i); 8(iii); 28-32; 66. In light of the foregoing and due to the confusion engendered by plaintiff's barely intelligible complaint and despite the "less stringent standards" to which the pleadings of pro se litigant's are held (*Hughes v. Rowe*, 449 U.S. 5, 10, 101 S.Ct. 173, ___, 66 L.Ed.2d 163, ___ (1980)(per curiam) quoting *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct.

2893, ___, 106 L.Ed.2d 195, ___ (1972)), the District Court appropriately dismissed these pro se complaints pursuant to Rule 8. Accord *Prezzi v. Schelter*, 469 F.2d 691 (2d Cir. 1972)(dismissing 88 page pro se complaint for failure to meet Rule 8 requirements); *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)(dismissal pursuant to Rule 8 is usually reserved for those cases in which the "complaint is so 'verbose, confused and redundant that its true substance, if any, is well disguised'").

DENIAL OF LEAVE TO AMEND

Insofar as respondent Jeanine Pirro is concerned, the District Court did not abuse its discretion in denying petitioner leave to file amended complaints in the actions commenced as 96 Civ. 6927 and 96 Civ. 2995 because there was no possibility that a valid claim could be asserted therein against respondent Jeanine Pirro.

Although the decision as to whether or not to grant leave to amend a complaint is within the discretion of the District Court, refusal to grant leave must be based upon a valid ground. *Ronzani v. Sanofi S.A.*, 899 F.2d 195, 198 (2d Cir. 1990). Moreover, while it is generally an abuse of discretion to deny leave to amend a nonfrivolous complaint dismissed solely upon the grounds of Rule 8 (*Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988), the denial of leave

to amend the instant complaints, following their dismissal upon other Rule 12(b)(6) grounds as well as Rule 8, is distinguishable.

One valid ground to deny leave to amend a complaint is when the granting of such leave would be futile. *Acito v. Imcera Group, Inc.*, 47 F.3d 47, 55 (2d Cir. 1995) citing *S.S. Silberblatt, Inc. v. East Harlem Pilot*, 608 F.2d 28, 42 (2d Cir. 1979). At least insofar as the respondent Jeanine Pirro was concerned, it would have been futile to permit the filing of amended complaints inasmuch as there is no scenario by which the petitioner could have stated valid claims against respondent Jeanine Pirro.

Insofar as the RICO claim asserted against respondent Jeanine Pirro filed in 96 Civ. 2995 was concerned, assuming *arguendo* that petitioner could plead sufficient facts to establish the existence of an "enterprise," there is no state of facts by which respondent Jeanine Pirro could be demonstrated to be a participant in such an enterprise. Participation in an enterprise is demonstrated by the commission of two predicate acts. See, e.g. *DeFalco v. Dirie*, 923 F.Supp. 473, 476 (S.D.N.Y. 1996) citing *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5, 17 (2d Cir. 1983) cert. denied sub. nom. *Moss v. Newman*, 465 U.S. 1025, 104 S. Ct. 1280, 79 L.Ed.2d 684 (1984). The only act of the

respondent Jeanine Pirro, alleged to have been committed as a participant in the enterprise, was her request for the appointment of a Special District Attorney, which was undertaken based upon a reasonable interpretation of New York State Penal Law §240.30(1). If leave to amend his complaints had been granted, petitioner would have been unable to state a valid RICO claim against respondent Jeanine Pirro inasmuch as it is alleged that only one, not the required two acts, were committed by respondent Jeanine Pirro as a participant in the purported enterprise. Moreover, not even this single act could serve as a predicate because it was not a crime (*Mathon v. Marine Midland Bank, N.A.*, 875 F.Supp. 986, 995 (E.D.N.Y. 1995)(predicate acts must be crimes under state or federal law)) and did not violate a "clearly established statutory or constitutional right[ ] of which a reasonable person would have known" (*Buckley v. Fitzsimmons*, 509 U.S. 259, 268-269, 113 S. Ct. 2606, ____, 125 L.Ed.2d 209, ___ (1993) quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, ___, 73 L.Ed.2d 396, ___ (1982)).

Any attempt to amend the causes of action asserted against respondent Jeanine Pirro in 96 Civ. 6927 would have been equally futile. Petitioner's 42 U.S.C. §1983 cause of action arising out of the events of October 5, 1995 failed to allege the personal involvement of respondent

Jeanine Pirro and therefore failed to state a cause of action as against her. See *Moffitt v. Town of Brookfield*, 950 F.2d 880, 885 (2d Cir. 1991); *McKinnon v. Patterson*, 568 F.2d 930, 934 (2d Cir. 1977) cert. denied 434 U.S. 1087, 98 S. Ct. 1282, 55 L.Ed2d 792 (1978). Petitioner's second cause of action was also asserted pursuant to 42 U.S.C. §1983 and alleged a violation of his first amendment rights. This cause of action was also not susceptible of amendment to state a valid cause of action against respondent Jeanine Pirro because the purported first amendment violation by respondent Jeanine Pirro arose out of her request for the appointment of a Special District Attorney to investigate petitioner's possible violation of New York State Penal Law §240.30(1). This request was made in respondent Jeanine Pirro's official capacity as District Attorney of Westchester County, was based upon a reasonable interpretation of a penal statute, did not violate a "clearly established statutory or constitutional right[ ] of which a reasonable person would have known" (*Buckley v. Fitzsimmons*, 509 U.S. 259, 268-269, 113 S. Ct. 2606, ____, 125 L.Ed.2d 209, ___(1993) quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, ___, 73 L.Ed.2d 396, ___ (1982) and was therefore entitled to, at least, qualified if not absolute immunity. The final cause of action asserted against respondent Jeanine Pirro in 96 Civ.

6927 was likewise not susceptible to amendment. In that cause of action petitioner invoked the pendent jurisdiction of the federal courts and alleged the commission of the state law torts of harassment and the intentional infliction of emotional distress. New York State law does not recognize the tort of harassment and insofar as petitioner's claim of the intentional infliction of emotional distress is concerned, the petitioner can not amend this cause of action in a manner that will state a claim inasmuch as, among other things, respondent Jeanine Pirro's request for a Special District Attorney was based upon a reasonable interpretation of New York State Penal Law and therefore was clearly not conduct that goes "beyond all possible bounds of decency." See *Gay v. Carlson*, 60 F.3d 83, 89 (2d Cir. 1995).

In conclusion, certiorari review by this Honorable Court is not warranted herein because the courts below properly stated and applied the applicable rules of law and made no erroneous findings of fact.

CONCLUSION

Based upon the foregoing, respondent Jeanine Pirro, the Westchester County District Attorney, respectfully requests that the Petition for a Writ of Certiorari filed by Charles Jones be denied in its entirety and that this Honorable Court grant such other and further relief as is deemed just and proper.

Dated: May 3, 1999
White Plains, New York

Respectfully submitted,

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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 98-1581

IN THE

Supreme Court of the United States

CHARLES JONES,

Petitioner,

v.

DONALD J. TRUMP, MARLA MAPLES TRUMP, THE PLAZA HOTEL, also known as PLAZA OPERATING PARTNERS, LTD., ROBERT MORGANTHAU, individually and as District Attorney, County of New York, DOREEN KLEIN, individually and as an Assistant District Attorney for the County of New York, THE TRUMP ORGANIZATION, JEANINE PIRRO, District Attorney, individually and as District Attorney, County of Westchester, ALBERT PIRRO, MATTHEW CALAMARI, DOMENIC PEZZO, JANIE ELDER, JOHN BANER, Individually and as a New York City Police Officer, ROBERT GIANETTA, Individually and as a New York City Police Officer, DEL LARROCA, FREDERICK H. COHN, EXECUTIVE PLAZA CONDOMINIUM, CDL HOTELS, MICHAEL BERGER, RICHARD FIELDS, CITY OF NEW YORK, ANN OGLETREE, BRIAN HIGGINS, Individually and as a New York City Police Officer, and WILLIAM LYNCH, Individually and as a New York City Police Officer,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF IN OPPOSITION FOR THE TRUMP RESPONDENTS

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Should the U.S. Supreme Court review a unanimous affirmance by the Court of Appeals for the Second Circuit of the District Court's well-reasoned dismissal, pursuant to Rule 12(b)(6) and Rule 8 of the Federal Rules of Civil Procedure, of facially insufficient, prolix, convoluted, and scandalous complaints filed by a *pro se* litigant in two actions primarily asserting federal civil rights violations, allegedly stemming from two criminal prosecutions, one of which is still on-going?

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Appendix B — Brief For Appellees Donald J. Trump, Marla Maples Trump, The Trump Organization, Janie Elder, Richard Fields, Ann Ogletree, Matthew Calamari, Domenic Pezzo, Michael Berger And Jay Goldberg In The United States Court Of Appeals For The Second Circuit Dated January 15, 1998 ..... 4a

BRIEF IN OPPOSITION

This brief is respectfully submitted on behalf of Respondents Donald J. Trump, Marla Maples Trump, Janie Elder, Richard Fields, Ann Ogletree, Domenic Pezzo, Matthew Calamari, the Trump Organization, and their counsel below, Michael G. Berger, Esq. and Jay Goldberg, Esq. (collectively, the "Trump Parties"), in opposition to the petition for a writ of certiorari by Petitioner Charles Jones ("Jones") to review the Opinion and Order of the United States Court of Appeals for the Second Circuit, dated September 21, 1998.

We submit there is no basis for this Court to review said Opinion and Order, which correctly affirmed the District Court's Opinion and Order, dated May 22, 1997, dismissing Jones' facially insufficient, prolix, convoluted and scandalous complaints, with prejudice, and the subsequent Opinion and Order of the same court, dated July 11, 1997, reaffirming the dismissal upon reconsideration.

FEDERAL RULES INVOLVED

Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure (reprinted in the appendix hereto).

STATEMENT OF THE CASE

Nature of the Case

Jones' claims against the Trump Parties seem to allege violations of 42 U.S.C. § 1983 and 18 U.S.C. § 1962; as well as state law, *i.e.*, alleged malicious abuse of process, malicious prosecution (which he also calls "retaliatory prosecution"), fraud, extortion, conspiracy, defamation, breach of contract, intentional infliction of emotional distress, trespass, conversion, theft, invasion of privacy and harassment.

The claims stem primarily from events surrounding two criminal prosecutions of Jones, commencing in 1992, involving criminal acts against Marla Maples Trump.

The first action ("Jones I") filed in June 1995, deals mainly with events underlying the first criminal prosecution of Jones for burglary, criminal possession of stolen property, and criminal possession of a weapon, arising from Jones' unlawful entry into Mrs. Trump's residence and unauthorized taking of her personal possessions. This criminal prosecution is still on-going.

The second action ("Jones II"), filed in September 1996, involves a subsequent criminal prosecution of Jones for aggravated harassment arising from Jones' alleged use of facsimile transmissions to distribute unsolicited sexually explicit photographs, purporting to depict Mrs. Trump, to various locations, including but not limited to The Plaza Hotel in New York City.

To the extent the Trump Parties can understand Jones' rambling and confusing amended complaints, he appears to be alleging some sort of global, overarching conspiracy between the Trump Parties, the New York City Police Department and the offices of the District Attorneys of New York and Westchester counties.

Jones variously asserts that these parties assaulted him, falsely imprisoned him, and tried to "coerce" him to return papers, videos and photographs concerning the Trumps which he contends he did not have (but, nonetheless, purports to describe in great detail). Jones seems to claim that he was being coerced to sign a nondisclosure agreement regarding the Trumps, and to relinquish rights under a purported oral "contract" wherein he claims Mrs. Trump allegedly

promised Jones a percentage of monies obtained through her marriage.

Jones' conspiracy theory is also intermixed with equally frivolous claims of defamation of character, intentional infliction of emotional distress and harassment.

These claims had previously been asserted and and conclusively decided against Jones.

Jones first tried to show a conspiracy between the Trump Parties and the police in a lengthy pretrial suppression hearing in People v. Jones (Supreme Court, N.Y. Co.; Indictment No. 3108/93) (the "Burglary Prosecution").

After an exhaustive evidentiary hearing to determine the validity of a pre-arrest search of Jones' office, the New York Supreme Court squarely found that there was no conspiracy between the Trump Parties and the police. [See January 19, 1994 Opinion and Order of Hon. Richard T. Andrias, annexed as Exhibit A to Berger Affid. in Support of Trump Parties motion dismiss, Docket 11 (96 Civ. 2995)[1].]

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[1] All of the Trump Parties' submissions below were (continued...)

Jones tried once again to prove his claims of a giant police-civilian conspiracy, false imprisonment, assault, defamation and intentional infliction of emotional distress in Jones v. The Plaza Hotel, The Trump Organization, Barry Cregan, Domenic Pezzo, Matthew Calamari, Ann Ogletree, Janie Elder, Robert Gianetta, Brian Higgins, William Lynch, John Doe, the City of New York and Donald J. Trump, Index No. 117696/93 (Sup. Ct. N.Y. Co.) (the "State Court Suit"). The claims of false imprisonment, assault, and a giant police-civilian § 1983 conspiracy were dismissed by the state court based on the collateral estoppel effect of the prior Opinion and Order of Hon. Andrias denying Jones' motion to suppress in the Burglary Prosecution. [See Berger Aff., Ex. B (Order and Decision of Justice Louis B. York, S.C.J., dated September 30, 1996, at p. 2), Docket 11 (96 Civ. 2995).]

The remaining defamation and intentional infliction of emotional distress claims were likewise

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[1](...continued)
docketed in both 96 Civ. 2995 and 96 Civ. 6927, but for purposes of expediency, record references will be to the docket entries made in 96 Civ. 2995.

dismissed in a Final Order and Judgment of Justice Louis B. York, S.C.J., dated September 30, 1997, which was affirmed by the New York Appellate Division, First Department on April 7, 1998.[2]

Yet, Jones continues to press his vexatious claims of a giant civil rights conspiracy between the Trump Parties, police and prosecutors. We submit that the District Court correctly found that Jones' present attempts to convert his failed § 1983 claims into RICO claims, malicious prosecution claims and other claims stemming from the supposed "conspiracy," as well as his defamation claims, are all precluded by the doctrines of *res judicata* and collateral estoppel.

Jones' claims for malicious prosecution are barred for the additional reason that there has been no ruling in any prosecution against Jones which indicates Jones' innocence of the criminal charges brought against him. In fact, to the extent the merits have been addressed, they have proven Jones' guilt.

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[2] Because this Final Order and Judgement in the State Court Suit was issued after the District Court's Orders, it is not contained in the record on appeal.

In short, the entirety of Jones' claims -- to the extent they can be understood -- are purely a continuing course of perverse and malicious harassment against persons and entities he imagines are persecuting him. Jones is abusing judicial processes to pursue these baseless claims as a personal vendetta. This duplicative litigation has no legal or factual basis.

REASONS FOR DENYING THE WRIT

It is patently clear, that this is not a matter that ought to be before this Court.

The decision below was plainly a correct application of settled law relating to the sufficiency of pleadings. [For the Court's reference, a copy of the brief filed by the Trump Parties in the Court of Appeals for the Second Circuit is annexed hereto.]

This Court need only review the pleadings and the protracted history of abusive litigation by Jones to determine that the court below committed no abuse of discretion in dismissing the amended complaints, with prejudice. In so ruling, the courts below in no way denied Jones of due process. He has had ample opportunity to present his claims numerous times. However, the defendants, too, have a right to not be subjected to frivolous and repetitive litigation.

There is no important federal question implicated in these actions, and the Second Circuit's order is not in conflict with the decision of this Court or any other United States court of appeals on the same matter.

Nor has any of the courts below departed from the accepted and usual course of judicial proceedings.

CONCLUSION

WHEREFORE, based on the foregoing, the briefs filed with the Court of Appeals for the Second Circuit, and the additional discussion in all the other respondent opposition papers, the Trump Parties respectfully submit that Jones' petition should be denied.

Dated: New York, New York
April 30, 1999

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APPENDIX A — FEDERAL RULES INVOLVED

FEDERAL RULES OF CIVIL PROCEDURE

Rule 12(b)(6)

Rule 12. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on Pleadings

* * *

(b) How Presented. . . . the following defenses may at the option of the pleader be made by motion:

* * *

(6) failure to state a claim upon which relief can be granted,

* * *

Appendix A

Rule 8

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

* * *

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the

alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

APPENDIX B — BRIEF FOR APPELLEES DONALD J. TRUMP, MARLA MAPLES TRUMP, THE TRUMP ORGANIZATION, JANIE ELDER, RICHARD FIELDS, ANN OGLETREE, MATTHEW CALAMARI, DOMENIC PEZZO, MICHAEL BERGER AND JAY GOLDBERG IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED JANUARY 15, 1998

[Omitted here but submitted separately as Lodging Appendix]